

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CITY OF REDONDO BEACH,

Employer,

and

REDONDO BEACH POLICE OFFICERS
ASSOCIATION (POLICE MANAGEMENT
UNIT),

Exclusive Representative.

Case No. LA-IM-145-M

Administrative Appeal

PERB Order No. Ad-409-M

April 9, 2014

Appearances: CJT Law by William G. Benz, Attorney, for City of Redondo Beach; Silver, Hadden, Silver, Wexler & Levine by Richard A. Levine, Attorney, for Redondo Beach Police Officers Association (Police Management Unit).

Before Martinez, Chair; Winslow and Banks, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Redondo Beach Police Officers Association (Police Management Unit) (Association) of the Office of the General Counsel's (OGC) administrative determination (attached) that the Association's request for factfinding was untimely pursuant to section 3505.4 of the Meyers-Milias Brown Act (MMBA)¹ and PERB Regulation 32802.²

We have reviewed the record and the relevant law and find the administrative determination to be well reasoned. We hereby dismiss the Association's appeal and adopt the administrative determination as the decision of the Board itself, in light of the following discussion.

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

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

FACTS

The Association represents a bargaining unit of employees in the City of Redondo Beach (City). The most recent memorandum of understanding (MOU) between the Association and the City expired on June 30, 2012. For a period of sixteen months, the parties were in negotiations over a successor MOU for the 2013-2014 fiscal year (FY).

On July 11, 2013, the Association provided the City with a memorandum whose subject line read, "Meet and Confer/Declaration of Impasse/Request for Mediation MOU for period July 1, 2012 to June 30, 2013."³ The memorandum stated: "This letter shall serve as your official notification that our group has officially declared impasse and we are requesting all official procedures and processes that are associated with such declaration."

On a date that is not specified, the Association requested mediation, which is voluntary, pursuant to the EER. On October 23, 2013, the City declined the Association's request for mediation.

On November 13, 2013, the City presented the Association with a "Last Best and Final Offer" (LBFO) that encompassed the 2012-2013 and the 2013-2014 FYs. The City gave the Association until 4:00 pm on November 20, 2013, to accept the LBFO or "the City shall consider the failure to timely agree to result in a concurrent declaration of impasse by the City and [the Association] shall be concurrently on notice that an impasse has been declared without provision to it of further notice in that regard."

³ Pursuant to the MMBA, the City has local rules codified as Resolution 6046, Rules and Regulations for the Administration of the Employer-Employee Relations (EER) that address both the mediation process and the definition of impasse. Under the EER, mediation is voluntary and if the parties cannot agree to mediation the City Council will take final action in regards to the impasse. Impasse is defined as the point where the parties' "differences on matters to be included in the Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile."

In a letter to PERB dated November 20, 2013, the Association requested factfinding. On December 5, 2013, the OGC issued an administrative determination finding that the Association's factfinding request did not meet the statutory or regulatory timeliness requirements.

On December 10, 2013, the Association filed a timely appeal. In its appeal, the Association argues that MMBA section 3504.4, subdivision (2) contemplates factfinding only after mediation, and that because the City did not definitively respond to its request for mediation until October 23, 2013, its request to PERB for factfinding was timely. It also asserts that factfinding should be limited to negotiations that occurred in FY 2012-2013.

On December 13, 2013, the City responded to the Association's appeal. The City contends that the Association's deadline to request factfinding for FY 2012-2013 was triggered by the Association's own July 11, 2013, declaration of impasse and that the Association's November 20, 2013, factfinding request was not timely under the MMBA and PERB regulations. The City further requests that if on appeal, the Board determines that factfinding is appropriate, that the process should encompass the entire period of negotiations in FYs 2012-2013 and 2013-2014.

DISCUSSION

Initially, we consider the Board's jurisdiction to consider this appeal. Although not raised by the parties or discussed in the OGC's administrative determination, because the Association may represent employees who are either "designated as management employees" or "peace officers" or both, within the meaning of MMBA sections 3509, subdivision (f), and/or 3511, the Board has an obligation to determine whether it has jurisdiction to consider this appeal. The Board has reviewed the language of the MMBA and determined that neither of the above provisions of the MMBA affect PERB's jurisdiction to appoint a factfinder in this case, as provided for by MMBA section 3505.4.

During the 1999-2000 legislative session, the Legislature made several amendments to the MMBA whose effect was to grant PERB jurisdiction over much of its administration. In particular, MMBA section 3509, subdivision (a), was amended to read: “The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c).” The language of this subdivision then lists, by way of example, some powers and duties of the Board, including “the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule.” Stated succinctly, this amendment to the MMBA incorporated by reference the full scope of the Board’s powers to administer the Educational Employment Relations Act (EERA or Act),⁴ which are set forth in section 3541.3 of that Act.

At the same time, however, the Legislature also created certain exceptions to the broad powers granted to the Board. Section 3509, subdivision (f) states that the powers and duties granted to the Board by way of section 3509, subdivision (a), “shall not apply to employees designated as management employees under Section 3507.5.”⁵ Additionally, MMBA section 3511 states that, “The changes made to Sections 3501, 3507.1, and 3509 of the Government Code by legislation enacted during the 1999-2000 Regular Session of the

⁴ EERA is codified at section 3540 et seq.

⁵ Section 3507.5 reads:

In addition to those rules and regulations a public agency may adopt pursuant to and in the same manner as in Section 3507, any such agency may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the public agency and restricting such employees from representing any employee organization, which represents other employees of the public agency, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of employees to be members of and to hold office in an employee organization.

Legislature shall not apply to persons who are peace officers as defined in Section 830.1 of the Penal Code.”

The record for the present appeal does not indicate whether the Association represents employees of the City who are “management employees,” “peace officers” or both, though the full name of the Association suggests this possibility. To address any concerns regarding the Board’s jurisdiction, we assume for the purpose of this discussion, that the Association represents either “management employees,” “peace officers” or both, as those terms are used in MMBA sections 3509, subdivision (f) and 3511.

By their own terms, the “management employees” and “peace officer” exceptions found in sections 3509, subdivision (f), and 3511 are exceptions only to those powers and duties granted to the Board by section 3509, subdivision (a). If MMBA section 3509 were the only source of the Board’s power to appoint a factfinder for MMBA disputes, then the “management employees” and “peace officer” exceptions to PERB’s jurisdiction could apply. However, section 3509, subdivision (a), is not the source or the only source of the Board’s power to recommend or appoint a factfinder under MMBA pursuant to a request from an exclusive representative. Rather, that authority comes from MMBA section 3505.4, which includes no language indicating that the powers of the Board pursuant to that section are subject to either the “management employees” or the “peace officer” exceptions. In short, whatever the scope of the “management employees” and “peace officer” exceptions to PERB’s jurisdiction over the MMBA, we conclude that the Legislature did not intend for these exceptions to apply to PERB’s authority to appoint a factfinder, because the Legislature did not include similar language in MMBA section 3505.4.

We next address the central issue raised by this appeal, whether the Association’s request to PERB for factfinding was timely.

MMBA section 3505.4, subdivision (a)⁶ provides as follows:

The employee organization may request that the parties' differences be submitted to a factfinding panel If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. . . .

PERB Regulation 32802 provides as follows:

(a) An exclusive representative may request that the parties' differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules; or

(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.

The Association declared impasse on July 11, 2013, and requested "all official procedures and processes that are associated with such declaration," which, under the EER included mediation if both parties agreed. It also made a separate request for mediation at some unspecified date after July 11, 2013. However, the parties did not agree to submit their dispute to mediation and thus, the deadline for the Association to request factfinding occurred "not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse." (MMBA, § 3505.4; PERB Reg. 32802, subd. (a)(2).)

MMBA section 3505.4 clearly gives the sole right to request factfinding to the employee organization in the dispute, not the employer. By including a definite time limit on

⁶ The factfinding provisions were added to the MMBA by Assembly Bill 646 (Stats. 2011, Ch. 680, § 2) and amended by Assembly Bill 1606 (Stats. 2012, Ch. 314, § 1). The amendment, which added the language about either party providing written notice of declaration of impasse, was intended to be technical and clarifying of existing law. (Stats. 2012, Ch. 314, § 2.)

the ability of employee organizations to request factfinding, presumably the Legislature intended to ensure that the factfinding process occur in a timely manner. The responsibility to request factfinding in a timely manner is therefore the sole responsibility of the employee organization. The fact that the City waited until well beyond the 30-day period to deny mediation does not alleviate the Association's responsibility to meet the statutory and regulatory deadline to request factfinding, particularly when it was the Association's own declaration of impasse that triggered that deadline. The Association failed to make a timely request under MMBA 3505.4, subdivision (a), and PERB Regulation 32802 and as a result its appeal is denied.

Since the Association's factfinding request is denied, we do not address any other issues raised by the parties on appeal.

ORDER

The Redondo Beach Police Officers Association's (Police Management Unit) appeal of the administrative determination in Case No. LA-IM-145-M is hereby DENIED.

Chair Martinez and Member Winslow joined in this decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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December 5, 2013

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Re: *City of Redondo Beach and Redondo Beach Police Officers Association (Police Management Unit)*
Case No. LA-IM-145-M
Administrative Determination

Dear Interested Parties:

On November 20, 2013, the Redondo Beach Police Officers Association—Police Management Unit (Association) filed a request for factfinding with the Public Employment Relations Board (PERB or Board) pursuant to section 3505.4 of the Meyers-Milias-Brown Act (MMBA) and PERB Regulation 32802.¹

On November 27, 2013, PERB notified the parties that the request did not satisfy the statutory and regulatory requirements and that this Administrative Determination would subsequently be provided.

Factual Background and the Positions of the Parties

The Association represents a bargaining unit of employees of the City of Redondo Beach (City). The Association asserts that it and the City have been negotiating over a successor Memorandum of Understanding (MOU) to cover the period July 2012 through June 2013. The last MOU between the parties expired on June 30, 2012.

On July 11, 2013, the Association's President, Scot Martin, and its Chief Negotiator, Paul Wrightsman, provided City Manager Bill Workman with a memorandum containing a written notice of declaration of impasse. The subject line of the memorandum is "Meet and

¹ The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

Confer/Declaration of Impasse/Request for Mediation MOU for period July 1, 2012 to June 30, 2013.” The memorandum states: “This letter shall serve as your official notification that our group has officially declared impasse and we are requesting all official procedures and processes that are associated with such declaration.”

The City has adopted local rules pursuant to the MMBA, which it has codified as Resolution 6046, Rules and Regulations for the Administration of Employer-Employee Relations (EER). Article IV, section 15, of the EER provides for impasse procedures. It provides that, if the meet and confer process has reached impasse, both parties together may agree to submit the dispute to mediation and agree on the selection of a mediator. EER Article IV, section 15, further states:

If the parties do not agree on mediation or the selection of a mediator, or having so agreed, the impasse has not been resolved through such mediation, the Council shall take such action regarding the impasse as in its discretion deems appropriate as in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

EER Article I, section 2(i) defines impasse as when:

the representatives of the City and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

On an unspecified date, the Association had requested mediation under the local rules. The Association alleges that, on October 23, 2013, the City declined the Association’s request for mediation.

On November 13, 2013, the City gave the Association a document entitled “Last, Best and Final Offer” (LBFO). The LBFO states:

The City of Redondo Beach and the representatives from [the Association] have met and conferred in good faith for over 16 months without resolution or agreement over terms and conditions of their contract. The City is prepared to offer this Last Best and Final Offer to [the Association].

The LBFO states that it will remain in effect through June 30, 2014. Therefore, the LBFO appears intended to encompass the 2012-2013 fiscal year as well as the 2013-2014 fiscal year.

The LBFO further states:

If the Assistant City Manager does not receive written notice from [the Association] on or before November 20, 2013 at 4:00 p.m. that this Last, Best and Final City Proposal has been tentatively agreed to in full as written ... the City shall consider the failure to timely agree to result in a concurrent declaration of impasse by the City and [the Association] shall be concurrently on notice that an impasse has been declared without provision to it of further notice in that regard.

By letter dated November 20, 2013, the City, through its attorney Philip Toomey, took the following position:

The [Association's] request for fact finding attempts to limit the fact finding process to the period of July 2012 through June 2013. By law, any fact finding procedure must encompass all the parties' differences, and may not be limited to previously concluded fiscal years. We agree that the City and [the Association] are at impasse for all periods.

By letter dated November 21, 2013, the Association, through its attorney Richard Levine, provided the following response:

The Association contends that its Factfinding request dated November 20, 2013 should not include the period of July 2013-June 2014 since the parties have not had even one negotiation meeting respecting a Memorandum of Understanding for the 2013/2014 fiscal year. Consequently, the Association's Request for Factfinding dated November 20, 2013 was properly limited to the impasse on negotiations for a successor Memorandum of Understanding covering the period of July 2012 – June 2013.

By letter dated November 22, 2013, the City, through its attorney Bill Benz, took the following position:

...if any fact finding is to take place between the parties, it must be for all periods of impasse, and cannot be limited to a specific time period selected by the employee organization. . . . The parties are at impasse for *all time periods*, not just FY 12-13. [emphasis in original]

The City states that it gave its LBFO to the Association on November 13, 2013. Instead of accepting the LBFO by November 20, 2013, the Association requested factfinding. The City contends that the Association's deadline to request factfinding as to the bargaining for fiscal year 2012-2013 was triggered by the July 11, 2013, written declaration of impasse. The City

further contends that it extended a “verbal and written offer”—presumably the November 13, 2013, LBFO—encompassing fiscal years 2012-2013 and 2013-2014.

By letter dated November 26, 2013, the Association reiterated its position that impasse was “effectively reached on October 23, 2013 when the City declined the Association’s request for Mediation.”

Discussion

MMBA section 3505.4, subdivision (a),² provides as follows:

The employee organization may request that the parties’ differences be submitted to a factfinding panel If the dispute was not submitted to mediation, an employee organization may request that the parties’ differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. . . .

PERB Regulation 32802 provides as follows:

(a) An exclusive representative may request that the parties’ differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties’ agreement to mediate or a mediation process required by a public agency’s local rules; or

(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.

The parties did not submit the bargaining dispute to mediation or select a mediator. The EER provides for voluntary mediation upon agreement of both parties. While the Association states that it requested mediation, the City declined this request. There is no showing that the parties

² The factfinding provisions were added to the MMBA by Assembly Bill 646 (Stats. 2011, Ch. 680, § 2) and amended by Assembly Bill 1606 (Stats. 2012, Ch. 314, § 1.) The amendment, which added the language about either party providing written notice of declaration of impasse, was intended to be technical and clarifying of existing law. (Stats. 2012, Ch. 314, § 2.)

agreed to mediation or selected a mediator. Therefore, the 30-day period for the Association to request factfinding was triggered by “the date that either party provided the other with a written notice of a declaration of impasse.”

The Association requests factfinding with respect to the negotiations for a successor MOU covering the period of July 2012 through June 2013. In its November 21, 2013, letter, the Association reiterates that its factfinding request is limited to the period of July 2012 through June 2013, and does not include any subsequent period. The Association provided the City with its written notice of declaration of impasse relevant to the 2012-2013 bargaining on July 11, 2013. The instant request for factfinding was filed more than 30 days later, on November 20, 2013.

The Association contends that impasse “was effectively reached” on a later date, October 23, 2013, when the City declined the Association’s request for mediation. However, neither MMBA section 3505.4 nor PERB Regulation 32802 allow PERB to determine when impasse was “effectively reached,” nor do these provisions allow PERB to calculate timeliness of a factfinding request based upon a party’s decision not to utilize mediation. Rather, these provisions require PERB to calculate timeliness relative to: (1) the appointment or selection of a mediator, or (2) a written declaration of impasse. Here, the parties did not appoint or select a mediator, therefore the timeliness of the factfinding request must be based upon the July 11, 2013 written notice of declaration of impasse.

Determination

The request for factfinding is untimely filed with respect to the Association’s request for factfinding for a successor MOU covering the period of July 2012 through June 2013. Accordingly, the factfinding provisions of MMBA section 3505.4 do not apply to this situation and this request is denied. This determination is without prejudice to the Association filing a timely factfinding request with respect to bargaining for the 2013-2014 fiscal year.

Right to Appeal

Pursuant to PERB Regulations, the County may file an appeal directly with the Board itself and can request an expedited review of this administrative determination. (Cal. Code Regs., tit. 8, §§ 32147, subd. (a), 32350, 32360, 32802, 61060.) An appeal must be filed with the Board itself within 10 days following the date of service of this determination. (Cal. Code Regs., tit. 8, § 32360, subd. (b).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board. (*Ibid.*)

A document is considered “filed” when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered “filed” when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 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, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is: Public Employment Relations Board
 Attention: Appeals Assistant
 1031 18th Street
 Sacramento, CA 95811-4124
 (916) 322-8231
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If the County appeals this determination, the Union may file with the Board an original and five copies of a statement in opposition within 10 calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32375.)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, § 32132.)

Sincerely,

Laura ~~Z~~. Davis
Senior Regional Attorney

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