STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JAN GODDARD, Charging Party, v. RAINBOW MUNICIPAL WATER DISTRICT, Respondent.	Case No. LA-CE-120-M PERB Decision No. 1676-M August 19, 2004

Appearances: City Employees Association by David Cochran for Jan Goddard; Foley & Lardner by Lynn R. Goodfellow, Attorney, for Rainbow Municipal Water District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Rainbow Municipal Water District (District) of an administrative law judge's (ALJ) proposed decision (attached). The unfair practice charge alleged that the District violated the Meyers-Milias-Brown Act (MMBA)[1] by discharging Jan Goddard (Goddard) for telling fellow employees that the District's general manager had offered promotional opportunities to another employee if that employee would help prevent the union from affiliating with a certain labor consulting firm. A complaint was issued by the Board, which alleged that this conduct constituted a violation of MMBA sections 3506 and 3509(b), and PERB Regulation 32603(a).[2]

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

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

The Board has reviewed the entire record in this matter, including the hearing transcript, the exhibits, the ALJ's proposed decision, the District's exceptions, and Goddard's response to the District's exceptions. The Board finds the ALJ's proposed decision to be without prejudicial error and adopts it as a decision of the Board itself.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the Rainbow Municipal Water District (District) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3506 and 3509(b), and PERB Regulation 32603(a).

Pursuant to MMBA section 3509(b), it is hereby ORDERED that the District, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

Discriminating against employees because of their exercise of the right to engage in activities protected by the MMBA.

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

1. Within ten (10) workdays after service of a final decision in this matter, make Goddard whole for any losses he suffered by: removing from District records all reference to his discharge on February 13, 2003; offering him reinstatement to the position of Value Maintenance Technician I, or if that position no longer exists then to an equivalent position, provided he receives clearance from the Public Employment Retirement System to accept a full-time position; and paying him back pay based on wages set for Value Maintenance Technician I, with interest at the rate of 7 percent per annum.

2. Within ten (10) workdays after service of a final decision in this matter, post copies of the Notice to Employees attached hereto as an Appendix, signed by an authorized agent of the District, at all work locations where notices to employees are customarily posted. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

3. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all work locations where notices are customarily posted, copies of the notice attached hereto as an Appendix.

4. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with the director's instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on Jan Goddard.

It is further Ordered that the administrative law judge's proposed decision in Case No. LA-CE-120-M is hereby AFFIRMED.

Chairman Duncan and Member Neima joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-120-M, Jan Goddard v. Rainbow Municipal Water District, in which all parties had the right to participate, it has been found that the Rainbow Municipal Water District (District) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3506 and 3509(b), and PERB Regulation 32603(a) by discharging Jan Goddard (Goddard) because of his exercise of protected rights.

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

A. CEASE AND DESIST FROM:

Discriminating against employees because of their exercise of the right to engage in activities protected by the MMBA.

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

Make Goddard whole for any losses he suffered by: removing from District records all reference to his discharge on February 13, 2003; offering him reinstatement to the position of Value Maintenance Technician I, or if that position no longer exists then to an equivalent position, provided he receives clearance from the Public Employment Retirement System to accept a full-time position; and paying him back pay based on wages set for Value Maintenance Technician I, with interest at the rate of 7 percent per annum.

Dated: _____ RAINBOW MUNICIPAL WATER DISTRICT

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAN GODDARD, Charging Party, v. RAINBOW MUNICIPAL WATER DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-120-M PROPOSED DECISION (12/16/03)

Appearances: City Employees Associates by David Cochran, Attorney, for Jan Goddard; Foley & Lardner by Lynn Goodfellow, Attorney, for Rainbow Municipal Water District.

Before Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

A former employee of a public agency claims that he was terminated from employment because of his protected activities. On March 13, 2003,[1] Jan Goddard (Goddard) filed an unfair practice charge against the Rainbow Municipal Water District (District). The charge alleges Goddard was discharged for telling fellow employees that the District's general manager had offered promotional opportunities to another employee if that employee would help to prevent the union from affiliating with a certain labor consulting firm.

On April 3, the general counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that by the above conduct, the District violated the Meyers-

[1] All dates refer to the year 2003 unless otherwise specified.

Milias-Brown Act (MMBA) section 3506 and committed an unfair practice under section 3509(b).[2]

Informal conferences were held on May 28, June 24 and July 7, 2003, but the matter was not resolved. Formal hearing was held before the undersigned on September 23, 2003, at the Los Angeles offices of PERB. After the filing of post-hearing briefs, the matter was submitted for decision on December 2, 2003.

FINDINGS OF FACT

The District is a public agency within the meaning of MMBA section 3501(c). The Rainbow Water District Employees Association (REA) is a recognized employee organization within the meaning of section 3501(b), representing a unit of employees employed by the District. By letter of November 8, 2002, REA informed the District that it had retained the services of City Employees Associates (CEA) as its labor relations consulting firm. In January 2003, agents of REA and CEA met with District management in what CEA's principal described as a "friendly" meeting. However, by letter of January 18, the District informed CEA that it does not recognize CEA as the "authorized representative" of REA, or as having "legal authority" to represent any REA unit employees regarding their labor relations with the District.[3] The letter also threatened to report agents of the CEA to the California Bar

[2] MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. MMBA section 3502 guarantees to public employees the right to "form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation" and "to represent themselves individually in their employment relations with the public agency." Section 3506 mandates that public agencies "shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502." Section 3509(b) provides that any violation of MMBA is an unfair practice.

[3] CEA had also been retained by the Rainbow District Association of Managers and Supervisors (RAMS) and the District also refused to recognize CEA as the RAMS representative. The District was apparently confused for some time as to whether CEA was

Association for attempting to contact District management directly instead of going through the District's outside law firm. In the letter, the District also noted that unit employees are "at-will" and have no due process rights.

Goddard began his employment with the District on September 11, 2002, as a custodian. As he was receiving disability retirement benefits from the Public Employees Retirement System (PERS), his employment contract was time-limited. Shortly after his hire, Goddard applied for the posted position of Value Maintenance Technician I. As this position was permanent and full-time, he needed clearance from PERS, which both he and his treating physician requested. For the new position, Goddard had passed the written exam, the physical and drug tests, had been interviewed, and Human Resources Administrator Rene Bush (Bush) sent an "intent to hire" letter to PERS. On approximately February 10, Goddard met with General Manager Greg Ensminger (Ensminger) in his office; after some small talk, Ensminger shook Goddard's hand, said he had passed the background check, and said, "Welcome aboard."[4] Goddard's supervisor Kevin Miller (Miller) also congratulated him and told him that he was to start training for the new job the following Monday. Although Goddard had not yet received his official PERS clearance, filled out tax forms, or been given a starting date, I credit his uncontradicted testimony that he was given a few hours of training prior to his discharge on February 13.

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another labor organization with which REA and RAMS intended to affiliate, or whether it was being retained as labor consultant. Apparently, the District now recognizes CEA's status as the latter.

[4] At the hearing, Goddard and Ensminger disagreed as to who asked for the meeting; I need not and do not resolve this dispute. Ensminger denied assuring Goddard that he had the new job; however, he did not deny shaking Goddard's hand, telling him he passed the background check, and saying, "Welcome aboard." Thus, I credit Goddard in this regard.

With regard to Goddard's relationship with REA, it is undisputed that he had been attending REA meetings and wanted to join, notwithstanding that as a temporary employee he was not a member of the bargaining unit. CEA had told him they would recommend to REA that he be allowed to join. Of course, had he gotten the permanent technician position, he would have become a unit member.

On the afternoon of February 11, Goddard was emptying trash outside Ensminger's office. Although the door was closed and Goddard was standing 10-15 feet away, he could hear Ensminger talking to someone he addressed as "Chris."[5] Goddard knew there were two employees named Chris, but he did not recognize the voice and did not know which one Ensminger was talking to. According to Goddard, Ensminger said that employees had no right to associate with CEA, that CEA only wanted to take their money, that associations make what he (Ensminger) is trying to accomplish more difficult, and that the only way he would accept CEA is if "they shove it down my throat." Then Ensminger said, "Chris, if you can help me on this the sky's the limit as far as your career goes," and "[I]f we can work together on this we can really shine, really go places."

Karen Diego (Diego), a fellow employee, then entered the area. Goddard told her what he had just heard, and said he believed Ensminger was illegally offering an employee a promotion if the employee would work against the union. Diego listened at the door but did not comment and left the area. According to Goddard, whose uncontradicted testimony I credit, he intended to contact REA, but the then-acting president was out in the field and could not be reached. He therefore left a message with Robin Nahan of CEA, and related the Ensminger conversation to Midge Thomas (Thomas), fellow employee and former REA

[5] It was obvious from Ensminger's testimony at the hearing that he has a loud and clear speaking voice.

president. That afternoon, Miller approached Goddard and said a rumor was going around about the Ensminger conversation; Goddard told Miller what he had heard, said he believed what Ensminger said was illegal, and that he intended to report it to REA.

Goddard testified that, at the weekly Monday morning staff meetings, Ensminger often discussed REA and CEA, saying that employees had no right to have REA associate with CEA and that the District would not recognize CEA, and that the employees were at-will and he could discharge them at any time.

On February 12, Goddard was called to an investigatory meeting in the human resources office with Bush, Miller, and Chris Heincy (Heincy), the unit employee speaking with Ensminger on February 11. Goddard repeated what he had overheard, and again said he did not think what Ensminger said was right and that he intended to report it to CEA.[6] Notwithstanding that nothing Heincy said in response to Ensminger had been rumored or was at issue, Heincy was angry and accused Goddard of damaging his reputation. Goddard explained that he did not know which "Chris" that Ensminger was talking to on February 11, and that he was sorry if he hurt Heincy because he thought they were friends. But Heincy was not placated. Heincy said he had gone to Ensminger only to find out how REA's association with CEA would affect him and Ensminger reassured him he would not be hurt by CEA, but Goddard's rumor had blown everything out of proportion.

Bush reminded Goddard that he worked in areas containing confidential information which he should not disclose. Goddard acknowledged that his job required certain confidential obligations, but said he thought Ensminger was doing something illegal. When Bush ended the meeting, she cautioned both Goddard and Heincy to keep both their meeting and the

[6] Bush testified that she could not recall whether Goddard said he would contact CEA, thus I credit Goddard's clear memory over Bush's inability to recall.

February 11 conversation confidential. She then questioned two other employees, who had heard the rumor from sources other than Goddard. However, she did not speak with Ensminger. Bush testified that she was concerned about confidentiality, but not with the truth of the rumor or whether Ensminger had made Heincy an illegal offer of promotion. Bush concluded from her investigation that Goddard had breached the code of confidentiality. She testified that she did not know whether the District's employee manual specifically addresses confidentiality, but that it does provide discipline for "conduct unbecoming an employee," which she contended includes confidentiality. On cross-examination, Bush conceded that employees should report a confidential conversation regarding a crime; however, she had never thought about whether they should report a confidential illegality.

Bush met with Ensminger on the morning of February 13 and reported the results of her investigation. According to Bush, she told him only that Goddard had "broken the confidentiality code." According to Ensminger's testimony, Bush said Goddard had "spun bits and pieces" of the February 11 conversation into an untrue story and spread it. However, it is clear that Bush did not ask Ensminger himself what he had said or whether any part of the rumor was true. Ensminger testified that he then decided to terminate Goddard. He did not "think it necessary" to talk to Goddard before making his decision, because he "trusted [Bush's] investigation" and his own "impression" that Goddard had spread the rumor to "several employees." Ensminger instructed Bush to notify PERS that Goddard's promotion was not to proceed, because Goddard was "not the kind of employee I'm looking for," one with honesty, integrity, work ethic, and a good value system.

On the afternoon of February 13, Goddard was again called to the human resources office where Bush informed him that, as a result of the investigation, he was terminated.

Miller escorted Goddard out of the building and handed him his personal belongings, which had already been gathered.

None of the other employees who had circulated the rumor to coworkers were punished; Bush testified that she did not know why this was so.

As to the truth of the February 11 conversation, Heincy testified that he met with Ensminger because he wanted to know whether he would be "protected" if REA decided to affiliate with CEA, and sought Ensminger's advice as to what he could do if things got "ugly." Heincy said he did not want to be part of CEA because he did not agree with its "philosophy" but he had no influence to keep CEA out. However, Heincy did not describe what he meant by "ugly" or why he thought he needed protection, or from what. Heincy denied that Ensminger made any promise or offer to him if he would help to keep out CEA. However, when asked what Ensminger did say to him, Heincy said he could not recall any of it, as it was so long ago. Heincy claimed he and Ensminger also made small talk about other things, but he could not recall any of it. He said he heard vacuuming outside the office door and knew it was Goddard; therefore, when he heard the rumor, he knew Goddard had started it. Heincy testified that he is friendly with everyone, including management, and the rumor hurt his relationship with people he is "trying to get along with." He said there are "cliques" who are opposed to management and who want to "stir things up," but he offered no details or explanation of this statement

Ensminger also testified. He said that when he came to the District, he told employees that everyone starts with an A-plus, and "the sky's the limit" if they do a good job. As to CEA, he said he originally thought it was a "full-blown union," and admitted that he told employees he would not recognize it because it had not gone through the proper District procedures for recognition. Ensminger did not deny telling employees that he could discharge them at any time because they were at-will employees; thus, I credit Goddard and find that he did say these

things from time to time at Monday staff meetings.[7] As to the February 11 conversation, Ensminger testified that he assured Heincy his protection would come from being a good employee, that if REA signed a collective-bargaining agreement Heincy would get its benefits, and that he did not have to be a member of CEA in order to be a member of REA. Ensminger did not testify, however, as to whether he offered Heincy a promotion if he would assist in getting rid of CEA.

Accordingly, given Ensminger's failure to testify on this most important issue and Heincy's summary denial that he was bribed, coupled with his failure to recall anything Ensminger said, I make an adverse inference against both of them and discredit their accounts of the February 11 conversation. (Ready Mixed Concrete Co. v. NLRB (10th Cir. 1996) 81 F.3d 1546 [152 LRRM 2159] [when a party's witness fails to testify to an essential fact, an inference may be drawn that if the testimony were given, it would be adverse to that party's interest].)[8] Further, I find Heincy's testimony, that he went to Ensminger only for advice because he thought things might get "ugly," combined with Heincy's inability to provide any explanation of what it was that he feared or what Ensminger's advice was, to be unpersuasive and I do not credit it. Accordingly, I credit Goddard in this regard and find that in the February 11 conversation, Ensminger told Heincy that he could have a promotion if he helped Ensminger get rid of CEA.

[7] Brown offered her own view that she "personally" did not think Ensminger would tell employees they had no right to be represented by CEA. I find this opinion speculative and give it no weight.

[8] PERB and the California courts have long held that decisions of the National Labor Relations Board (NLRB) interpreting similar statutes, e.g., those prohibiting discrimination, may be persuasive. (Inglewood Teachers Association v. PERB (1991) 227 Cal.App.3d 767 [278 Cal.Rptr. 228].)

ISSUE

Was Jan Goddard unlawfully discharged because of his protected activities?

CONCLUSIONS OF LAW

To establish a prima facie case of discrimination in violation of MMBA section 3506, the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 [182 Cal.Rptr. 461]); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553 [127 Cal.Rptr. 856].)

In analyzing the burdens of proof regarding these factors, NLRB v. Burnup & Sims, Inc. (1964) 379 U.S. 21 [57 LRRM 2385] (Burnup & Sims) is instructive. There, the Court held that once the charging party has shown an employee was punished for engaging in protected activity, the burden then shifts to the employer to show that the employee engaged in misconduct during the course of that activity. Here, Goddard was discharged because he told two fellow employees, the CEA, and his supervisor that Ensminger had illegally offered to promote an employee in exchange for helping to get rid of CEA. Thus, the questions are first, whether Goddard's report was protected activity; and second, whether he engaged in misconduct causing him to lose that protection. The District argues that Goddard committed a serious breach of confidentiality, notwithstanding the truth or falsity of his report. Goddard contends that his conduct was protected, notwithstanding the District's claim that the conversation was confidential. I agree with Goddard.

It is axiomatic that acts done in furtherance of union interests are protected. (Los Angeles Unified School District (1992) PERB Decision No. 957; North Sacramento School District (1982) PERB Decision No. 264.) As noted above, while Goddard was not yet a member of REA, he had been attending its meetings and was intending to join at his earliest opportunity. Ensminger's offer to Heincy would tend to interfere with Goddard's right to participate in REA, as well as REA's right to represent the unit employees.[9] Accordingly, I conclude that Goddard's report was made in furtherance of union interests and was protected under MMBA section 3502.

As to whether that protection was lost, in Mediplex of Wetherfield (1995) 320 NLRB 510 [153 LRRM 1103], an employee's discharge for attempting to induce group action over an issue he innocently misunderstood was held unlawful, as the NLRB found that the truth or falsity of his statements was not the proper test in such a circumstance. However, in The Hertz Corporation (1998) 326 NLRB 1097 [166 LRRM 1200], the administrative law judge's decision, adopted by the NLRB, noted that statutory protection is lost when an employee acts in bad faith, or with knowledge of the falsity of his remarks, or with intent to harass the employer or cause it economic harm. Here, I have already found that Goddard truthfully reported Ensminger's remarks. Even if Goddard had misconstrued the remarks, however, there is no evidence that he acted in bad faith or with any thought that his report was untrue. In this regard, I take note that Goddard did not spread a rumor willy-nilly; rather, he told only Diego, who appeared outside Ensminger's office during the conversation; Thomas, a former REA president; and supervisor Miller, who asked him about it. Accordingly, if Ensminger's remarks had been made in a public place, Goddard could not be faulted for repeating them.

[9] MMBA section 3503 guarantees to recognized employee organizations the right to "represent their members in their employment relations with public agencies."

But Goddard repeated words spoken from behind the closed door of the speaker's office. While PERB has not yet addressed the relationship between confidentiality and protected activity, in Canyon Ranch, Inc. (1996) 321 NLRB 937, 937 [154 LRRM 1225] (Canyon Ranch), the NLRB held that "private communications between management officials or between union officials (or employees) are entitled to respect." Thus, an employee was lawfully discharged for disclosing to coworkers a letter from a supervisor to the company president discussing certain terms and conditions of employment, which he found on the supervisor's desk. Here, by contrast, the February 11 conversation was not a communication between managers, but between a manager and a unit employee. Further, while Ensminger may have had an expectation of privacy, it would not befit this agency nor serve the purposes of the MMBA to afford his illegal offer of promotion a measure of respect. Thus, I find the principles enunciated in Canyon Ranch inapplicable.

In Super One Foods (1989) 294 NLRB 462 [131 LRRM 1773] (Super One Foods), the NLRB held that an employee was unlawfully discharged for violating a company rule prohibiting employees from discussing wages among themselves, as the rule itself was unlawful. The employer argued, nevertheless, that the employee was not entitled to reinstatement and back pay as he had taken a "confidential" wage list from the manager's office, copied it, and distributed it to coworkers. In holding that the employee had not lost the protection of the statute by this conduct, the NLRB reasoned that he found the list "in plain view" on the manager's desk while performing his regular duty of cleaning the manager's office, and that because of the employer's unlawful rule, employees were prevented from obtaining wage information on their own. A different result was reached in IBM Corporation (1982) 265 NLRB 638 [111 LRRM 1665] (IBM), where an employee was lawfully discharged for disclosing a wage survey which he found on a manager's desk. In the absence of a

company rule prohibiting employees from discussing wages, the NLRB balanced the employees' right to discuss wages against the employer's legitimate business justification for keeping the wage survey confidential. These two cases differ in their result because in Super One Foods, the employer maintained an unlawful rule preventing employees from exercising their statutory rights, while in IBM, the employer did nothing unlawful.

In the instant case, as in Super One Foods, Goddard was performing his regular cleaning duties when he overheard a conversation which he believed to be, and was in fact, unlawful, and attempted to enlist the protest of coworkers. As discussed above, the District had no specific rule regarding confidentiality. And Bush not only conceded that employees should report criminal conduct even if conducted in private, but she could not state with any conviction that they were prohibited from reporting private illegalities. Further, any rule which would prohibit employees from reporting violations of the MMBA would be unlawful on its face. (Super One Foods.)

Applying the Burnup & Sims analysis, I find that Goddard engaged in protected activity when he reported Ensminger's February 11 conversation, he was discharged because of that activity, and the District has failed its burden of showing that he engaged in any misconduct in the course of that activity. Accordingly, I conclude that by discharging Goddard, the District violated the MMBA as alleged in the complaint.

REMEDY

MMBA section 3509(b) gives PERB the authority to determine:

> . . . the appropriate remedy necessary to effectuate the purposes of this chapter, . . .

The District unlawfully discriminated against Goddard by discharging him because of his protected activity, in violation of MMBA section 3506. The ordinary remedy in such cases

is an order directing the respondent to cease and desist from discriminating against its employees because of their protected activities and to make the discriminatee whole for any losses which he suffered as a result of respondent's conduct. It is also the ordinary remedy that respondent be ordered to post a notice incorporating the terms of the order. It effectuates the purposes of MMBA that employees be informed by a notice, signed by an authorized agent, that respondent has acted unlawfully, is being required to cease and desist from its unlawful activity, and will comply with the order.

PROPOSED ORDER

Based on the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that on or about February 13, 2003, the Rainbow Municipal Water District (District) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3506 and committed an unfair practice under section 3509(b) by discharging Jan Goddard (Goddard) because of his protected activity. Therefore, pursuant to MMBA section 3509(b), it is hereby ORDERED that the District, its governing board and its representatives, shall:

A. CEASE AND DESIST FROM:

Discriminating against employees because of their exercise of the right to engage in activities protected by the MMBA.

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

1. Within ten (10) workdays after service of a final decision in this matter, make Goddard whole for any losses he suffered by: removing from District records all reference to his discharge on February 13, 2003; offering him reinstatement to the position of Value Maintenance Technician I, or if that position no longer exists then to an equivalent

position, provided he receives clearance from PERS to accept a full-time position; and paying him back pay based on wages set for Value Maintenance Technician I, with interest at the rate of 7 percent per annum.

2. Within ten (10) workdays after service of a final decision in this matter, post copies of the Notice to Employees attached hereto as an Appendix, signed by an authorized agent of the District, at all work locations where notices to employees are customarily posted. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

3. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the Sacramento Regional Director of the Public Employment Relations Board in accord with the director's instructions.

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 Public Employment Relations Board (PERB or 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 95814-4174
FAX: (916) 327-7960

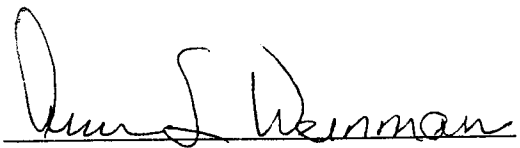
In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail,

as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(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, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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, secs. 32300, 32305, 32140, and 32135(c).)



Ann L. Weinman
Administrative Law Judge