STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RIVERSIDE SHERIFF'S ASSOCIATION, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	Case No. LA-CE-8-M PERB Decision No. 1715-M November 30, 2004

Appearances: Olins, Foerster & Hayes by Dennis J. Hayes and Douglas F. Olins, Attorneys, for Riverside Sheriff's Association; Liebert Cassidy Whitmore by Nate Kowalski, Attorney, for County of Riverside.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Riverside Sheriff's Association (RSA) to the proposed decision of an administrative law judge (ALJ) (attached). The unfair practice charge alleged that the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA)[1] by surface bargaining and participating in impasse procedures in bad faith in violation of MMBA sections 3503, 3505, 3506 and 3507.

The Board has reviewed the entire record in this matter, including the unfair practice charge, the proposed decision of the ALJ, the parties' briefs, RSA's exceptions and brief in support of the exceptions, and the County's reply. The Board finds the proposed decision of the ALJ to be free of prejudicial error and adopts it as the decision of the Board itself, subject to the discussion below.

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

RSA represents two units of employees in the County. These are the Public Safety (PS) unit (probation officers and group counselors) and the Law Enforcement (LE) unit (deputy sheriffs, correctional deputies, district attorney investigators and deputy coroners).

In April 2000, RSA replaced the Public Employees of Riverside County (PERC) (which continued to represent four other units, at least at the time of this case) in representing the PS unit. The memorandum of understanding (MOU) between the County and PERC (including the PS unit at that time) expired by its terms on June 30, 2000.

Negotiations began on the PS unit MOU in July 2000. The parties were far apart and made no progress in their July 20, 24, 26 and August 10 sessions. RSA had 31 proposals, 19 of which were economic. The County only proposed changes in the expired PERC MOU. RSA thought they were all unfavorable.

The most significant proposals by RSA asked for the 3/50 retirement benefit,[2] and three wage increases over the 30-month MOU. The increases were to be 10 percent, 8 percent and 6 percent. RSA also took the position that the PS unit was 16 percent below comparable jurisdictions but the County negotiator would not discuss comps.

The County had seven priority proposals (two were withdrawn and are not included here) which were:

1. A three year MOU.

2. A change in the language of "Fitness for Duty" reports and a return to work certificate from a County approved doctor.

3. Deletion of a promotional procedure article.

4. An agreement to the PeopleSoft payroll system.

[2]In 2000, the Public Employees Retirement System (PERS) made it possible to offer "safety" employees retirement benefits based on a formula of 3 percent at age 50 (3/50).

5. A change in the "disciplinary appeal procedure" article to eliminate requirements of a seven-day notice and a pre-disciplinary hearing for a suspension of five days or less.

On August 17, 2000, the County made its first economic offer. This was three .05 wage increases over a three-year MOU, one bi-weekly wage increase of $4.80 and two 1 percent step increases for employees at the top of their salary range. The County noted this was an "opening" offer.

RSA then countered. (The counter changed the three wage increases down to 9.5, 7.5 and 5.5 percent.) In the next session, on August 23, 2000, the County came up to a 1 percent increase in wages and increased the raise in the bi-weekly wage increase. The County did indicate at that time that unless RSA showed more movement, especially on the 31 initial proposals, the parties were fast approaching impasse.

RSA disagreed that they were at impasse. Five sessions were scheduled for September 2000 but none of those took place.

There was bickering back and forth after the County cancelled the sessions with a phone call on August 31, 2000.

While the slow bargaining on the PS unit was going on in August, the County went ahead and agreed with unions other than RSA to improve retirement benefits for the miscellaneous County employees. But, to be effective that had to apply to deputy coroners as well. (They were in the LE unit represented by RSA.)

The County then unilaterally amended its contract after advising RSA on August 22, 2000, that it was going to amend its contract with PERS to improve the retirement benefits of all County miscellaneous employees, including the deputy coroners.

This action annoyed RSA because the County's action was a unilateral breach of the same retirement section of the LE unit MOU that the County had declined to reopen in May 2000.

RSA filed in Superior Court for a Writ of Mandate blocking the County's action.

The County and RSA negotiators spoke further regarding cancellation of the September bargaining sessions.[3]

RSA indicated it had filed the lawsuit to get the County to reopen the 3/50 retirement issue although the lawsuit did not ask that the LE unit MOU be reopened. It also did not mention the PS unit at all but RSA did want to negotiate that for both units.

Then, on September 19, RSA asked the court to dismiss the lawsuit without prejudice. This was done as a condition for resuming negotiations for the PS unit.

The parties, however, at that time appeared to be more interested in the LE unit. The withdrawal of the lawsuit eventually led to negotiations for the LE unit.

On November 16, 2000, the parties signed an agreement.[4]

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[3]The cancellation was apparently because of the lawsuit being filed.

[4]The agreement included the following:

1. Commencing approximately November 21, 2000, the parties will enter into negotiations until no later than midnight, December 12, 2000, over the terms and conditions of a successor MOU.

2. Any new MOU resulting will become effective January 1, 2001.

3. Both parties waive impasse resolution alternatives. In the event the parties cannot agree there shall be no unilateral implementation.

4. Negotiations will be simultaneously with the LE unit. RSA agreed that if the LE unit failed to ratify a tentative agreement resulting from these negotiations any provision negotiated by the parties must be applicable to all employees within the same or similar occupational group, shall be null and void.

5. If the parties do not reach agreement negotiations shall end. Any tentative agreements shall be null and void but neither party gives up the right to submit proposals regarding these in the future.

The County then contacted RSA on November 6, 2000, indicating the County was ready to meet and stated it was ready to resume negotiations the week of November 13 through 17.

RSA and the County then began negotiations. They negotiated for the PS unit and the LE unit separately. That November session was the seventh meeting of the parties in negotiations but the first one since the end of August. The parties did apparently make progress in these November sessions.

On November 27, 2000 (the eighth meeting), the negotiator for the County testified that at that point, however, she felt they were still far apart and RSA had too many proposals on the table. She believed the cost of the County's proposals was 9.92 percent while the cost of the RSA position was 26.63 percent, not including the 3/50 costs which had not been calculated.

The negotiations continued past the December 12 deadline the parties had set for themselves. On December 22, 2000, the parties signed tentative agreements for the LE unit. Some of what was agreed to did impact the PS unit such as use of the PeopleSoft payroll system. This was in a side letter that provided for automatic implementation for deputy coroners of any PERS retirement.

In January 2001 they returned to negotiations for the PS unit. The County had apparently calculated the cost of 3/50 and indicated it was 4.68 percent. The County had not yet given that number to RSA. The County then amended its prior offer by deleting the first salary increase and replacing it with the 3/50. The spokeswoman believed that increased the County offer from 10.42 percent to 14.34 percent. RSA, on the other hand, believed this was a regressive offer. RSA took the position that the agreement on acceptance of the PeopleSoft system took care of the 3/50. The County indicated it could go no further, that was the last, best offer and then declared impasse.

The January 10 (eleventh session) was the last. RSA's spokesperson then stated "we'll go to impasse." (ALJ proposed dec. at p. 14.)

The parties met with a mediator in March and then again in May, 2001. These meetings were not successful in resolving the issues.

DISCUSSION

RSA alleged that the County was in bad faith for surface bargaining and set forth three indices. Those are:

1. The County cancelled five sessions previously scheduled for bargaining.

2. The County reneged on a tentative agreement regarding the 3/50 safety retirement.

3. The County withdrew salary proposals thereby engaging in regressive bargaining.

The ALJ did not believe the allegations were fully supported by the evidence. He held that there was no bad faith by the County because in the totality of the County conduct there was no surface bargaining. He did acknowledge that the cancellation of the September bargaining sessions was not legitimate, there were instances of bad judgment and miscommunication, but there was no evidence that the County intended to subvert the process with obstructionist conduct.

The charge alleges that the County violated Section 3505 and PERB Regulation 32603(c)[5] by engaging in bad faith or "surface" bargaining. Bargaining in good faith is a "subjective attitude and requires a genuine desire to reach agreement." (Placentia Fire Fighters v. City of Placentia (1976) 57 Cal.App.3d 9, 25 [92 LRRM 3373] (Placentia Fire Fighters).)

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

PERB has held it is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. (Muroc Unified School District (1978) PERB Decision No. 80.)[6] Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (Oakland Unified School District (1982) PERB Decision No. 275 (Oakland); Placentia Fire Fighters.)

The indicia of surface bargaining are many. Entering negotiations with a "take-it-or-leave-it" attitude evidences a failure of the duty to bargain because it amounts to merely going through the motions of negotiations. (General Electric Co. (1964) 150 NLRB 192, 194 [57 LRRM 1491], enf. 418 F.2d 736 [72 LRRM 2530].) Recalcitrance in the scheduling of meetings is evidence of manipulation to delay and obstruct a timely agreement. (Oakland Unified School District (1983) PERB Decision No. 326.) Dilatory and evasive tactics including canceling meetings or failing to prepare for meetings is evidence of bad faith. (Id.) Conditioning agreement on economic matters upon prior agreement on non-economic subjects is evidence of an unwillingness to engage in a give-and-take. (State of California (Department of Personnel Administration) (1998) PERB Decision No. 1249-S.)

Other factors that have been held to be indicia of surface bargaining include: negotiator's lack of authority which delays and thwarts the bargaining process (Stockton Unified School District (1980) PERB Decision No. 143 (Stockton)); insistence on ground rules

[6]When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

before negotiating substantive issues (San Ysidro School District (1980) PERB Decision No. 134); and reneging on tentative agreements the parties already have made (Charter Oak Unified School District (1991) PERB Decision No. 873; Stockton; Placerville Union School District (1978) PERB Decision No. 69).

It is clear, however, that while a party may not merely go through the motions, it may lawfully maintain an adamant position on any issue. Adamant insistence on a bargaining position is not necessarily refusal to bargain in good faith. (Placentia Fire Fighters; Oakland.) "The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained." (NLRB v. Herman Sausage Co. (5th Cir. 1960) 275 F.2d 229 [45 LRRM 2829, 2830].)

The examples of alleged bad faith conduct set forth by RSA (cited, supra) do not establish bad faith. Just because negotiations are not productive at certain points of time, does not mean they are in bad faith.

ORDER

The unfair practice charge in Case. No. LA-CE-8-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

RIVERSIDE SHERIFF'S ASSOCIATION, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-8-M PROPOSED DECISION (10/9/02)

Appearances: Olins, Foerster & Hayes by Dennis J. Hayes, Attorney, for Riverside Sheriff's Association; Liebert Cassidy Whitmore by Nate Kowalski, Attorney, for County of Riverside.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, an employee organization alleges that a public agency bargained in bad faith and then participated in impasse procedures in bad faith. The public agency denies any unlawful conduct.

The Riverside Sheriff's Association (RSA) filed an unfair practice charge against the County of Riverside (County) on August 6, 2001. The Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint against the County on November 2, 2001. The County filed an answer on November 28, 2001, denying the allegations against it.

PERB held an informal settlement conference on January 16, 2002, but the case was not settled, so PERB held a formal hearing on May 9, 13 and 14, 2002. With the receipt of final post-hearing briefs on August 5, 2002, the case was submitted for decision.

FINDINGS OF FACT

Introduction

The County is a public agency within the meaning of Government Code section 3501(c) of the Meyers-Milias-Brown Act (MMBA) and PERB Regulation 32016(a).[1] RSA is an employee organization within the meaning of MMBA section 3501(a), a recognized employee organization within the meaning of MMBA section 3501(b), and an exclusive representative within the meaning of PERB Regulation 32016(b). County Resolution No. 99-379 contains local rules within the meaning of PERB Regulation 32016(c), adopted by the County pursuant to MMBA section 3507.

This case concerns bargaining between RSA and the County in 2000-01 over a new Memorandum of Understanding (MOU) for the County's Public Safety (PS) unit of employees. The bargaining began badly and ended badly. Despite eleven bargaining sessions and two mediation sessions, RSA and the County never agreed on a new MOU. The question in this case is whether the County actually bargained in bad faith, and then participated in impasse procedures in bad faith.

Background to bargaining

RSA is the exclusive representative of two units of County employees: not only the PS unit but also the Law Enforcement (LE) unit. RSA has represented the LE unit for several years. This unit includes deputy sheriffs, correctional deputies, district attorney investigators and deputy coroners, among others. In LE unit bargaining, Attorney Douglas Olins (Olins) has

[1] MMBA is codified at Government Code section 3500 and following. PERB regulations are codified at Cal. Code of Regs., tit. 8, sec. 31001 and following.

been chief spokesperson for RSA since 1993, and Employee Relations Manager Edward McLean (McLean) has been chief spokesperson for the County since 1998.

In April 2000, RSA became the exclusive representative of the PS unit, which includes probation officers and group counselors. RSA replaced the Public Employees of Riverside County (PERC), which had previously represented five units of County employees (and apparently continues to represent the other four units). There was no evidence at hearing that the County was hostile to this change in representative. The MOU between the County and PERC for the five units (including the PS unit) expired by its terms on June 30, 2000.

A variety of factors affected the bargaining between the County and RSA over a new MOU for the PS unit. One factor was the County's investment in a new PeopleSoft payroll system, which the County wanted to implement in 2001. The PeopleSoft system would have a relatively minor impact on employees, but it was inconsistent with the previous PS unit MOU. It was therefore a top County priority to get RSA to agree to the PeopleSoft system.

Another factor affecting bargaining was the passage in 2000 of Senate Bill 402 (SB 02).[2] Effective January 1, 2001, SB 402 provided for binding interest arbitration of bargaining impasses involving firefighters or law enforcement officers. SB 402 applied not only to the County's LE unit but also to the probation officers in the County's PS unit. SB 402 did not apply, however, to the group counselors in the PS unit, who were not law enforcement officers within the meaning of SB 402.

New opportunities to improve retirement benefits also affected bargaining. The County's employees are covered by the Public Employee Retirement System (PERS, not to be confused with PERB). PERS classifies local agency employees as either "safety" or

[2] SB 402 is codified at Code of Civil Procedure section 1299 and following.

"miscellaneous." It requires local agencies like the County to offer their "safety" employees the same benefits, regardless of bargaining unit, and their "miscellaneous" employees the same benefits, regardless of bargaining unit. The County's PS unit employees have been treated as "safety" employees, as have most LE unit employees. The deputy coroners in the LE unit, however, are "miscellaneous" employees, like many County employees in units not represented by RSA.

In 2000, PERS made it possible for the County and other local agencies to improve retirement benefits for both "safety" and "miscellaneous" employees. Most significantly, PERS made it possible to offer "safety" employees retirement benefits based on a formula of 3 percent at age 50 (3/50). As RSA spokesperson Olins testified, 3/50 became "the hottest item for anyone who's in this business, and it's the number one goal of everyone who is eligible for it." On March 3, 2000, the RSA president wrote County spokesperson McLean, asking that the 1998-2001 LE unit MOU be reopened "for the limited purpose of discussing retirement benefits." On May 2, 2000, however, McLean replied that "the County respectfully declines your offer to reopen negotiations at this time."

Bargaining: the bad beginning

Bargaining over a new MOU for the PS unit began on July 20, 2000, with Olins as chief spokesperson for RSA. McLean attended the first three bargaining sessions, but the County's chief spokesperson was McLean's junior colleague, Debrah Freeman (Freeman). A few years earlier, Freeman had worked for PERC, but there is no evidence that she was hostile to RSA.

RSA and the County were far apart as bargaining began, and for the first four sessions (July 20, 24 and 26 and August 10, 2000) they made no progress in closing the gap. RSA was

asking for a lot, and the County was offering nothing. In fact, the County's only proposals were changes in the expired PERC MOU that RSA viewed as highly unfavorable.

RSA started out with 31 proposals, of which 19 were economic. Most significantly, RSA sought the 3/50 retirement benefit and, over the course of a 30-month MOU, three wage increases of 10 percent, 8 percent and 6 percent. RSA attempted to persuade the County that compensation for the PS unit was some 16 percent below that of comparable jurisdictions, but Freeman rejected discussion of comparable jurisdictions as unnecessary. (At the hearing, Freeman acknowledged that the failure to agree on comparable jurisdictions ultimately hurt the parties' ability to reach an overall agreement.)

At the fourth session, Freeman identified what she said were the County's seven priority proposals:

1. A 3-year MOU.

2. A change in "fitness for duty" language to require that a return-to-work certificate be from a physician "approved by the County."

3. The deletion of a "promotional procedure" article.

4. A change in retirement language to treat new employees as "miscellaneous" employees, while current employees were still treated as "safety" employees. (Olins questioned the legality of this proposal. It was later withdrawn.)

5. An agreement to the PeopleSoft payroll system.

6. The deletion of a "modified agency shop" article. (Freeman justified this proposal on "philosophical" grounds, but philosophy had not prevented the County from agreeing to agency shop language in the expired PERC MOU or the current LE unit MOU. Freeman argued that there had been employee dissatisfaction with unionism as expressed in

decertification, but Olins pointed out that RSA had won the decertification election by an overwhelming vote, ousting PERC. The proposal was later withdrawn.)

7. A change in a "disciplinary appeal procedure" article to eliminate requirements of a 7-day notice and a pre-disciplinary hearing for a suspension of 5 days or less.

For the first four sessions, Freeman made no economic offer to RSA. She told RSA that she had authority to make economic offers but had chosen not to do so. She said there needed to be movement on non-economic issues before the County would "put money on the table."

It seems possible that at least some of the County's seven "priority" proposals were in fact "sticks" designed to get RSA to agree to PeopleSoft without the County giving up any "carrots." If that was in fact Freeman's design, it did not work. Olins insisted that until the County made an economic offer there was nothing to discuss. Freeman then relented, saying she was not opposed to making an economic offer at the next session.

At the fifth session, on August 17, 2000, Freeman did indeed make the County's first economic offer to RSA. Freeman offered three 0.5 percent wage increases over the course of a 3-year MOU. She also offered one bi-weekly wage increase of $4.80 and two 1 percent step increases for employees at the top of their salary ranges. (RSA's initial proposal had included 3 additional steps in each salary range.) Freeman stressed that this was an "opening" offer. RSA countered in part by reducing its three proposed wage increases by 0.5 percent each (to 9.5 percent, 7.5 percent and 5.5 percent.)

The sixth session, on August 23, 2000, began with a presentation about the County's financial condition by an outside expert hired by RSA. The expert indicated that the County was in a good financial position to afford the 3/50 retirement formula for "safety" employees.

It does not appear that the expert tried to estimate the actual cost to the County of implementing 3/50. After the presentation, Olins asked if Freeman had new authority to agree to 3/50. She said no, stating that the County was still serious about treating new employees as "miscellaneous" employees.

At the same session, Freeman improved the County's offer by raising the first wage increase from 0.5 percent to 1 percent and also by raising the bi-weekly wage increase. Before doing so, Freeman said that unless the RSA showed more movement, especially on RSA's 31 initial proposals, the parties were rapidly approaching impasse. Olins attributed any lack of movement to the County's "unacceptable" proposals on promotional procedure, retirement and agency shop, as well as the lack of a "reasonable" economic proposal. Freeman said, "We may be at impasse," but Olins disagreed.

Neither party actually declared impasse at that point. They had five bargaining sessions scheduled for the month of September, the first of which was to feature the County's own expert on the PeopleSoft payroll system. Those five sessions would not take place, however.

A strange interlude

Sometime in August 2000, the County agreed with unions other than RSA to improve retirement benefits for "miscellaneous" County employees. In order to be effective, the improvement had to apply to all County "miscellaneous" employees, including the deputy coroners in the LE unit represented by RSA. On August 22, 2000, the County informed RSA that it was acting to amend its contract with PERS to improve the retirement benefits of all County "miscellaneous" employees, including the deputy coroners.

RSA was miffed, not because of the improvement as such, but because the County's action represented a unilateral breach of the same retirement section of the LR unit MOU that

the County had declined to reopen in May 2000. On August 20, 2000, RSA filed in Superior Court a petition for a writ of mandate blocking the County's action. A hearing on a temporary restraining order was held on August 31, 2000.

Also on August 31, 2000, Olins received a phone message from Freeman, canceling all five PS unit bargaining sessions scheduled in September 2000 (on September 6, 13, 14, 21 and 22). On September 8, 2000, Olins sent a Freeman a letter stating in part:

> I attempted to return your call that day, but you told me on Tuesday, September 5th that you had been out of town until September 5th. I was glad we finally caught up with each other today to understand the basis for your cancellation of those meetings. You informed me that the meetings were cancelled based upon the lawsuit that RSA has filed against the County regarding the Coroner Department employees receiving the single highest year retirement plan. You told me that there would be no point in meeting because retirement is such a big issue and you couldn't "in good conscience continue to bargain" where that issue is subject to litigation. As you expressed, you have your "marching orders" from County Counsel and [County Human Resources Director] Ron Komers.
>
> While I very much appreciate your candor as to the basis that you were forced to cancel these meetings, I did tell you that it was RSA's desire to negotiate a successor MOU. However, I agreed with you that if you had no authority to negotiate based upon your superior's instructions, that it would be pointless to reschedule negotiations until you have authority to negotiate on all areas subject to bargaining. You informed me that you are aware of a hearing on a motion scheduled in the court matter to take place on or about October 6, 2000 and that perhaps the issues relating to retirement would be resolved at that time. You expressed that it would be "difficult to bargain with this matter over your head" and therefore you felt it would be pointless until after the hearing.
>
> My client very much desires to bargain but also sees no point in negotiating with the County unless and until you have full authority to bargain on all issues, including retirement. We will await further review on this matter by the County. We are ready, willing and able to resume negotiations providing you are vested with sufficient authority.

At the hearing, Freeman denied that she received the letter, to which she did not reply.

Freeman also denied that the letter quoted her accurately, but she confirmed the substance of the letter. Specifically, she testified that her superior Ron Komers (Komers) directed her to cancel the bargaining sessions. She described Komers's explanation as follows:

> What he explained is that RSA had filed a lawsuit to compel the county to reopen at three at 50, and that – in that the issue of three percent at 50 currently being on the bargaining table at the public safety table would frustrate our efforts at that table to reach an agreement.

RSA's petition for a writ of mandate did not actually ask that the LE unit MOU be reopened, nor did it mention the PS unit at all, but RSA certainly did hope to negotiate 3/50 for both units.

On September 19, 2000, RSA asked the court to dismiss its petition without prejudice. According to Olins, RSA took this action as a condition for resuming negotiations for the PS unit. Rather strangely, however, negotiations for the PS unit did not resume in September or October, nor were there even any conversations between Olins and Freeman.

It appears that RSA and the County were more focused on the LE unit. According to Olins, the withdrawal of RSA's petition for a writ of mandate eventually led to negotiations for the LE unit. On November 16, 2000, Komers and the RSA president signed the following agreement:

> 1. Commencing approximately November 21, 2000, the parties will enter into negotiations until no later than midnight, December 12, 2000, over the terms and conditions of a successor Memorandum of Understanding (MOU).
>
> 2. Any new MOU resulting from the negotiations described in (1) above shall, if ratified by the RSA membership and approved by the County's Board of Supervisors, become effective January 1, 2001.

> 3. Both parties agree to waive impasse resolution alternatives, i.e., mediation, fact-finding, etc. provided under MMBA and/or Riverside County Employee Relations Rules. In the event that the parties are unable to reach complete and final agreement, there shall be no unilateral implementation.
>
> 4. Negotiations shall be conducted simultaneously with the Law Enforcement Management Unit. RSA agrees that if the LEMU membership fails to ratify a tentative agreement resulting from these negotiations, any provision(s) negotiated by both parties which, pursuant to State or federal law, must be applicable to all employees within the same or similar occupational group, shall become null and void and not applicable to the RSA represented employees.
>
> 5. In the event the parties are unable to reach an agreement within the period described under (1) above, negotiations shall end. Any tentative agreements reached between the parties on individual issues shall be null and void provided, however, that neither party relinquishes any right to submit proposals regarding the same or similar issues in the future negotiations conducted pursuant to the provisions of Article 1, Section 102 of the current MOU between the parties.

It appears there were 2 reasons the parties wanted to conclude negotiations by December 12, 2000: (1) Olins wanted to take a vacation, and (2) the County wanted to avoid the possibility of binding interest arbitration under SB 402, as effective January 1, 2001. Although the agreement mentions the Law Enforcement Management unit not represented by RSA, it does not mention the PS unit represented by RSA.

Meanwhile, on November 6, 2000, Freeman sent Olins a letter stating in part:

> As you may recall, the County of Riverside made a counter proposal to the RSA Public Safety Unit during our last negotiations session that occurred on August 23, 2000. Since that time, the parties have not met, either formally or informally, to attempt to resolve the issues in dispute and bring these negotiations to a successful conclusion. Inasmuch as the prior Memorandum of Understanding covering the wages, hours, and other terms and conditions of employment for employees in the unit expired at midnight on June 29, 2000, I believe it is

> important for the parties to meet. Therefore, I wish to inform you that the County is prepared to resume negotiations for the purpose of receiving your counter-proposals commencing any day during the week of November 13 through 17.

It appears that this was the first communication between Freeman and Olins since early September 2000.

The two tables

Pursuant to Freeman's November 6 letter and the November 16 agreement, the parties began simultaneous negotiations at two separate tables in November 2000. At the PS unit table, Olins and Freeman continued to represent RSA and the County respectively. At the LE unit table, Olins represented RSA and McLean represented the County, although Freeman attended two sessions.

The parties met at the PS unit table on November 16, 2000. This was actually their seventh session since late July, but their first since late August. The first question RSA raised at this session was whether the County had a cost analysis for the 3/50 retirement benefit. The County apparently did not. RSA noted that the PS unit's eligibility for 3/50 would depend on what happened at the LE unit table.

The parties appeared to make some significant progress on other economic issues at this session. RSA reduced its three proposed wage increases from 9.5 percent to 8.5 percent, 7.5 percent to 7.0 percent and 5.5 percent to 5.0 percent. RSA also withdrew two other economic proposals. For its part, the County raised its proposed second and third wage increases from 0.5 percent to 1.0 percent each. The County also raised its proposed bi-weekly wage increase and its proposed step increases for employees at the top of their salary ranges. Freeman represented that this increased the cost of the County's offer from $1 million to $2 million, and she emphasized that it was still not the County's final offer.

The parties appeared to make some significant progress on non-economic issues as well. The County offered to withdraw its proposals on retirement and agency shop in exchange for an agreement on PeopleSoft. The parties also moved toward compromises on promotional procedure and fitness for duty.

At the eighth session, on November 27, 2000, there was more progress. RSA reduced its first two proposed wage increases from 8.5 percent to 8 percent and 7 percent to 5.5 percent. RSA also withdrew four other economic proposals. The County then raised its three proposed wage increases by 0.5 percent to 1.5 percent each. RSA responded by withdrawing six more economic proposals. The parties reached tentative agreements on PeopleSoft and promotional procedure, and the County withdrew its controversial proposals on retirement and agency shop.

Freeman still felt the parties were far apart. She believed that the cost of the County's proposals was 9.92 percent, while the cost of RSA's proposals was 26.63 percent, even without including 3/50. (Apparently, the cost of 3/50 had still not been calculated.) Freeman said that she was close to her economic "parameters" and that RSA still had too many items on the table.

At the ninth session, on December 7, 2000, the County increased its third proposed wage increase from 1.5 percent to 2.0 percent. RSA responded by withdrawing three more economic proposals and by reducing its three proposed wage increases from 8 percent to 6.5 percent, 5.5 percent to 4 percent and 5 percent to 4 percent. Freeman said she was not prepared to counter again without direction from her superiors. According to Olins, Freeman said this frequently in negotiations and rarely if ever made two proposals at the same session.

Freeman also said at this session that "we could be affected by the other group [discussing] 3 percent at 50." The County apparently still did not know what the cost of 3/50 might be.

In fact, most of the action in December 2000 was at the LE unit table, and that action continued past the December 12 deadline the parties had set for themselves in their November 16 agreement. Olins went on his vacation, but he remained involved in negotiations by fax and phone, while McLean met at the table with the RSA president. On December 22, 2000, McLean and the RSA president signed a series of tentative agreements and a side letter stating in part:

> Subject to ratification of the pending tentative agreement between the Law Enforcement Unit and the County of Riverside, the County agrees that, in the event that other Safety bargaining units (Public Safety and LEMU) have not reached overall agreement by 7/1/01, the County shall implement its partial agreement of 3% @ 50 for all safety employees effective 7/1/01. The other Safety units shall continue to bargain with the County until they reach overall agreement.
>
> In consideration of the above, RSA immediately withdraws its objections to the county's implementation of the People-Soft payroll system for both the Law Enforcement and Public Safety Units. Furthermore, RSA agrees to the addition of the following provisions to the applicable MOUs: . . .

The side letter, which was drafted by McLean, also included separate specific provisions for the LE unit and the PS unit concerning payout for sick leave, vacation accrual and the implementation of PeopleSoft.

The tentative agreements covered only the LE unit. Among other things those agreements did the following:

1. Extended the LE unit MOU through December 31, 2004.

2. Provided for salary increases of 3 percent, 3 percent and 5 percent, beginning December 26, 2002.

3. Provided for the automatic implementation for deputy coroners of any PERS retirement enhancements negotiated for other "miscellaneous" employees.

The RSA president testified that in negotiating the side letter and tentative agreements "RSA made a number of concessions in exchange for [3/50]." McLean testified that when he first proposed a 3 percent at age 55 formula (on the way to 3/50) he reduced his salary proposal by 1.5 percent.

There was apparently no discussion at the LE unit table as to what effect the 3/50 agreement would have on issues at the PS unit table other than those specifically addressed in the side letter. The RSA president testified he did not have authority at the LE unit table to negotiate for the PS unit. Nonetheless, he did sign the side letter that included provisions affecting the PS unit.

The successful conclusion of LE unit negotiations might have been the prelude to the successful conclusion of PS unit negotiations. It was not.

To "impasse" and beyond

RSA and the County returned to the PS unit table for their tenth session on January 3, 2001. By then, the County had apparently calculated the cost of 3/50 for the PS unit as 4.68 percent, although the County did not yet share that calculation with RSA. Freeman amended the County's previous offer by deleting the first 1.5 percent salary increase and replacing it with 3/50. She believed this increased the cost of the County's offer from 10.42 percent to 14.34 percent.

Olins accused Freeman of making a regressive offer. In his view, RSA's agreement on PeopleSoft "already took care of [3/50]." Freeman disagreed, asserting that the December 22 side letter "did not say that groups wouldn't pay for [3/50]." She further asserted that RSA "would be one of the first groups in the state to achieve [3/50]." She said she had "no farther to go on [her] guidelines" and without agreement would "have no choice but to make this my last, best offer and declare impasse." Olins denied that the parties were at impasse and emphasized that the side letter said 3/50 was "in consideration of" the PeopleSoft agreement.

The eleventh bargaining session, on January 10, 2001, turned out to be the last one. Neither party made a new proposal. Olins stated that "it appears we will go to arbitration, . . . we'll go to impasse." Freeman formally declared impasse, with her January 3 offer as the County's last, best and final offer. Olins did not specifically dispute that there was a legitimate impasse, although he continued to refer to the January 3 proposal as regressive.

County Resolution No. 99-379 provides in part:

> Section 15. IMPASSE PROCEDURE.
>
> a. Impasse procedures shall not be requested by either party until all attempts at reaching an agreement through meeting and conferring have been unsuccessful.
>
> 1. The parties may mutually agree to request the assistance of a mediator from the California State Conciliation Service or any other mutually agree[d] upon mediator.

RSA invoked these provisions. The parties met with a mediator on March 5, 2001, but neither party made any new proposal.

On March 16, 2001, Olins sent Freeman a letter stating in part:

> We have reviewed your last, best and final offer and find it unacceptable. We have had one mediation session and were unable to reach agreement at the session. In the hope of reaching agreement, we hereby transmit our last, best and final offer. If

> you believe that our last, best and final offer merits further mediation please contact me. Otherwise, we will have to accept your position that we are at impasse regarding the probation officer classification.
>
> The following is our last, best and final offer for the probation officer classification:
>
> 1. Wages: January 1, 2001 through January 1, 2002 – 14.32%;
> 2. Insurance Benefits: Employees shall participate in the RSA Benefits Trust to secure medical benefits (e.g. Health, Dental, Vision and other insurances).
> 3. Insurance Benefits: Beginning January 1, 2001, the County shall contribute $42.00 per biweekly pay period times the number of employees into the RSA Benefits Trust.
>
> Please contact me regarding whether this offer is acceptable and whether you intend to make any counter-offers or feel that we are at impasse. We look forward to your response.

In making a one-year offer covering only the probation offers, RSA was setting up the possibility of seeking binding interest arbitration under SB 402.

Freeman felt this offer was regressive. In her view, it condensed RSA's previous 30-month proposal into a 12-month proposal and increased the cost to the County from 22.63 percent to over 24 percent. It was McLean and not Freeman, however, who responded with a letter to Olins dated March 22, 2001, stating in part:

> Upon reviewing your twelve month proposal (which would actually end 18 months after the expiration of our prior agreement) I find that you have, for some reason, failed to set forth your final proposal for the Group Counselor classifications. Therefore, before I can accurately assess and respond to your proposal, I am requesting clarification as to what you[r] final offer is regarding these classifications.

Olins replied with a letter dated March 29, 2001, stating in part:

> In response to the specific question you raised regarding clarification of RSA's final offer regarding group counselor classifications, you are correct that RSA did not set forth a final proposal for those classifications. The reason for that is that it is

> our understanding that the group counselor classifications are not eligible for interest arbitration pursuant to Code of Civil Procedure §1299 *et seq.* RSA is ready, willing and able to continue negotiations to an agreement on the group counselor classifications. With regard to the other classifications, which are subject to interest arbitration, we have made our last, best and final offer and are awaiting your response so we may determine whether or not it is appropriate to request interest arbitration.

RSA thus made explicit its contemplation of interest arbitration.

Although Freeman found RSA's March 16 offer regressive, the County received legal advice that because of that offer the parties were no longer at impasse. On April 11, 2001, McLean sent Olins a letter stating in part:

> After reviewing the responses set forth in . . . your March 16, 2001, and March 29, 2001, letters, the County does not believe that we are at impasse at this time. Therefore, we wish to further mediate the issues in dispute for both Group Counselors and Deputy Probation Officers.

A skeptical Olins responded with a letter dated April 12, 2001, stating in part:

> While we always are hopeful of reaching agreement, we would be unwilling to again appear at mediation unless the County is ready, willing and able to make an offer that is materially better than its last offer. As a note, the County's last, best and final offer of January 3, 2001, and repeated on January 10, 2001, was woefully inadequate and was regressive from prior offers. If the County is prepared to make a materially better offer, we would be willing to meet with you in mediation. The last mediation session was wasteful of everyone's time. I await your prompt response to this letter.

McLean replied with a letter dated April 16, 2001, stating in part:

> This is to inform you that I have received and reviewed your April 12, 2001, letter to me. As stated in my April 11, 2001, correspondence to you, the County does not believe we are at impasse at this time and are prepared to resume mediation for the purpose of making offers and counter-offers over the issues in dispute for the Public Safety Bargaining Unit. To that end, I suggest that we contact Dave Harte [sic] of the State Mediation

> and Conciliation Service to schedule a mediation session as soon as possible.

The parties ultimately agreed to a second mediation session, to be held on May 15, 2001.

At the second mediation session, Olins soon had reason to think his skepticism had been justified. Through the mediator, the County made a 12-month proposal for group counselors that included only 3/50 (as already agreed upon) and an 18-month proposal for probation officers that included 3/50 and a 1.7 percent step increase for employees at the top of their salary ranges. Olins regarded this as a "reduction offer." The only concession the County had made was to reduce the term of its earlier 3-year proposals.

Freeman believed that the County's May 15 proposals were sufficient to put both group counselors and probation officers above the compensation level of comparable jurisdictions. RSA believed otherwise. Of course, the parties had never agreed on any comparable jurisdictions, and Freeman had rejected any discussion of the subject. McLean testified that the County went into the second mediation with "additional flexibility" and "would, in all likelihood, have made [another] offer" if RSA had made one of its own. RSA made no new offer, however.

Two days later, on May 17, 2001, Olins sent McLean a letter stating in part:

> Pursuant to Code of Civil Procedure §1299.4(a), the parties have exhausted their mutual efforts to reach agreement over matters within the scope of arbitration after impasse and the mediator agreed to by the parties has been unable to effectuate settlement. RSA hereby notifies you that it requests that the differences between the parties regarding the probation department employees be submitted to an arbitration panel. Pursuant to CCP [section] 1299.4(b), within three days of receipt of this written notification, please designate a person to serve as your member of the arbitration panel.

Olins followed up on May 18, 2001, with a letter naming the RSA president as RSA's member on the arbitration panel.

On May 22, 2001, McLean responded with a letter stating in part:

> In response to your request, I wish to inform you that the Board of Supervisors, as fortified by the decision of the Santa Cruz Superior Court, believes that binding arbitration violates provisions of the California State Constitution. Therefore, we respectfully decline your request to submit the issues in dispute to an arbitration panel.

RSA reacted by going to the Riverside County Superior Court and obtaining an order compelling the County to arbitrate under SB 402. In support of the order, the RSA president filed a declaration stating in part:

> On May 15, 2001, the County submitted another oral last, best and final offer; and upon RSA's rejection of that offer, the County declared impasse again. At this point, negotiations between RSA and the County actually had arrived at impasse.

At the PERB hearing, however, the RSA president testified that he did not believe the impasse declared by the County was "legitimate."

The County in turn went to the Fourth District Court of Appeal and obtained a writ of mandate compelling the superior court to set aside its order, on the ground that SB 402 was unconstitutional. (County of Riverside v. Superior Court (2002) 97 Cal.App.4th 1103 [118 Cal.Rptr.2d 854].) On July 17, 2002, however, the California Supreme Court granted RSA's petition for review of the court of appeal's decision.

ISSUES

1. Did the County bargain in bad faith?

2. Did the County participate in impasse procedures in bad faith?

CONCLUSIONS OF LAW

The PERB complaint alleges that the County violated MMBA section 3505 and PERB Regulation 32603(c) by engaging in bad faith or "surface" bargaining. Bargaining in good faith is a "subjective attitude and requires a genuine desire to reach agreement." (Placentia Fire Fighters v. City of Placentia (1976) 57 Cal.App.3d 9, 25 [92 LRRM 3373] (Placentia Fire Fighters).) PERB has held it is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. (Muroc Unified School District (1978) PERB Decision No. 80.)[3] Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (Oakland Unified School District (1982) PERB Decision No. 275; Placentia Fire Fighters.)

The indicia of surface bargaining are many. Entering negotiations with a "take-it-or-leave-it" attitude evidences a violation of the duty to bargain because it amounts to merely going through the motions of negotiations. (General Electric Co. (1964) 150 NLRB 192, 194 [57 LRRM 1491], enf. 418 F.2d 736 [72 LRRM 2530].) Recalcitrance in the scheduling of meetings is evidence of manipulation to delay and obstruct a timely agreement. (Oakland Unified School District (1983) PERB Decision No. 326.) Dilatory and evasive tactics including canceling meetings or failing to prepare for meetings is evidence of bad faith. (Ibid.)

[3] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

Conditioning agreement on economic matters upon prior agreement on non-economic subjects is evidence of an unwillingness to engage in a give-and-take process. (State of California (Department of Personnel Administration) (1998) PERB Decision No. 1249-S.)

Other factors that have been held to be indicia of surface bargaining include: a negotiator's lack of authority, which delays and thwarts the bargaining process (Stockton Unified School District (1980) PERB Decision No. 143); insistence on ground rules before negotiating substantive issues (San Ysidro School District (1980) PERB Decision No. 134); and reneging on tentative agreements the parties have already made (Charter Oak Unified School District (1991) PERB Decision No. 873; Stockton Unified School District, supra, PERB Decision No. 143; Placerville Union School District (1978) PERB Decision No. 69).

It is clear, however, that while a party may not merely go through the motions, it may lawfully maintain an adamant position on any issue. Adamant insistence on a bargaining position is not necessarily a refusal to bargain in good faith. (Placentia Fire Fighters; Oakland Unified School District, supra, PERB Decision No. 275.) "The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained." (NLRB v. Herman Sausage Co. (5th Cir. 1960) 275 F.2d 229 [45 LRRM 2829, 2830].)

In the present case, the PERB complaint specifically alleges three indicia of surface bargaining. The first allegation states:

> (a): On August 31, 2000, Respondent [the County] cancelled five previously scheduled bargaining session[s];

This allegation is fully supported by the evidence, and it seems to be a significant indication of bad faith on the County's part. The evidence shows that the County canceled the five PS unit sessions set for September 2000 because RSA had filed a lawsuit concerning retirement benefits for employees in the separate LE unit. The County's action seems to have been based

on a fit of pique more than on any legitimate bargaining strategy. There is no apparent reason why RSA and the County could not have continued to negotiate the many economic and non-economic issues concerning the PS unit regardless of the lawsuit.

On the other hand, RSA seems to have acquiesced in the bargaining delay occasioned by the County's conduct. In his letter to Freeman on September 8, 2000, Olins stated that RSA "sees no point in negotiating with the County unless and until you have full authority to bargain on all issues, including retirement." More significantly, even after acting to dismiss its lawsuit on September 19, 2000, RSA apparently took no action to restart the PS unit negotiations. It was Freeman's letter to RSA on November 6, 2000, that apparently restarted those negotiations. In any case, the County's cancelation of the September bargaining sessions is not enough by itself to establish surface bargaining in the totality of the County's conduct.

The second and third allegations of indicia of surface bargaining state:

> (b): On January 3, 2001, Respondent reneged on a tentative agreement regarding the "3% @ 50" safety retirement;
>
> (c): On January 3, 2001, Respondent engaged in regressive bargaining by withdrawing its salary proposals.

These allegations are not fully supported by the evidence. They really refer to the same conduct: the County's amendment of its previous offer (of December 7, 2000) by deleting the first 1.5 percent salary increase and replacing it with 3/50. This did not amount to "withdrawing its salary proposals," as the County was still offering two salary increases of 1.5 percent and 2 percent, plus a bi-weekly salary increase (of $15.00), plus two step increases of 2.71 percent each for employees at the top of their salary ranges. Nor did the County's conduct truly amount to "regressive bargaining," given that the overall cost of the package increased (by the County's calculation) from 10.42 percent to 14.34 percent.

Furthermore, it cannot be said that the County "reneged on a tentative agreement" concerning 3/50. There is no evidence that the County failed to ratify or implement the December 22 side letter that provided 3/50, nor is there any evidence that the County sought additional consideration for ratifying or implementing the side letter.

RSA argues that because the side letter specified the PeopleSoft agreement as "[i]n consideration of" 3/50, the County could not take any account of the cost of 3/50 in its further bargaining on economic issues. This seems a naïve (or disingenuous) view of the side letter. It is true that the PeopleSoft agreement was a priority for the County, but it was relatively costless for RSA, while 3/50 would cost the County some 4.68 percent (apparently in excess of $1 million). It is unrealistic to suppose that the County would ignore this cost in further economic bargaining.

According to its president, RSA "made a number of concessions" concerning the LE unit in exchange for 3/50. The PeopleSoft agreement was only one of those concessions. Presumably, RSA did not accept less for the LE unit in order to benefit the PS unit. RSA should therefore reasonably have expected that it might have to accept less for the PS unit as well.

It is obvious that there was a failure of communication between RSA and the County (and perhaps within RSA and the County) as to the relationship between the simultaneous negotiations at the two tables in November and December 2000. I believe both parties bear some responsibility for this failure, but I do not conclude that either party acted in bad faith.

In its post-hearing brief, RSA argues that there were two other indicia of surface bargaining. RSA argues in part that the County insisted on resolving non-economic issues before negotiating economic issues. It is true that for the first four sessions Freeman sought

movement on non-economic issues before making an economic offer. It is also true that this strategy was unproductive, but I do not conclude that it was intended to be so. In fact, when the strategy proved unproductive, Freeman made an economic offer at the fifth session and improved it at the sixth session, even without apparent movement on non-economic issues.

RSA also argues that Freeman had insufficient authority to bargain, as evidenced in part by her failures to make two proposals at the same session and her statements that she was not prepared to do so without direction from her superiors. RSA cites no cases, however, for the proposition that the ability to make multiple proposals without consultation is essential to bargaining authority. Freeman certainly did not just listen to RSA and say "no" to its proposals. On the contrary, from the fifth through the ninth sessions she made and improved economic proposals, while withdrawing or compromising non-economic proposals, and her actions apparently had the full authority of the County.

I conclude that the totality of the County's conduct does not evidence surface bargaining. I acknowledge that the County's cancelation of the September meetings was illegitimate, and that there were other instances of bad judgment and miscommunication. The bargaining process began badly and ended badly, without a new MOU.[4] I am unpersuaded, however, that the County actually intended to subvert that process with obstructionist conduct.

The PERB complaint also alleges that the County violated MMBA sections 3505 and 3505.2 and PERB Regulation 32603(e) by participating in impasse procedures in bad faith. It appears from RSA's post-hearing brief, however, that RSA may have abandoned this allegation. RSA specifically argues that there was "no legitimate impasse," in which case

[4] I note, however, that RSA still got 3/50, which its spokesperson described as "the hottest item for anyone who's in this business, . . . the number one goal of everyone who is eligible for it."

there was presumably no legal obligation for either party to participate in impasse procedures at all. I do not find it necessary, however, to decide whether there was a "legitimate" impasse in order to resolve the issues framed by the complaint.

The PERB complaint specifically alleges three indicia of post-impasse bad faith:

> (a): On March 5, 2001, Respondent refused to make any proposals or modify its offers;
>
> (b): On May 15, 2001, Respondent withdrew its salary proposals;
>
> (c): On May 22, 2001, Respondent refused to participate in interest arbitration pursuant to Code of Civil Procedure section 1299.4.

In context, however, these indicia do not establish bad faith.

It is true that at the first mediation session, on March 5, 2001, the County made no new proposals, but neither did RSA. The County had made the most recent proposal, which the County believed increased its cost from 10.42 percent to 14.34 percent. I do not attribute the County's failure to improve that proposal to bad faith.

It is at least somewhat misleading to say that at the second mediation session (on May 15, 2001) the County "withdrew its salary proposals." The County did still offer a 2.71 percent step increase for probation officers at the top of their salary range. Moreover, the salary proposals that the County "withdrew" had been part of a three-year proposal, while the County's May 15 proposal was for 12-18 months, in response to RSA's own 12-month proposal of March 16, 2001. Rather than an attempt to thwart agreement, the County's May 15 proposal can be viewed as an attempt (however inadequate) to reach a quick short-term agreement and to leave the bigger issues (including more significant salary increases) for later negotiations.

It is true that in its May 22 letter the County declined to submit the issues in dispute to arbitration under SB 402. The County's position was based, however, on an apparently good faith and non-frivolous doubt about the constitutionality of SB 402. That issue will be decided by the California Supreme Court, not by PERB. Whatever the outcome, I see no reason why PERB should view negatively the County's decision to contest the issue.[5]

Although the totality of the conduct of the County (and of RSA) in and after mediation was certainly unproductive, I conclude that it has not been shown to have been in bad faith.

PROPOSED ORDER

Based on the foregoing findings of fact and conclusions of law, and the entire record in this case, it is ordered that the complaint and the underlying unfair practice charge in Case No. LA-CE-8-M, Riverside Sheriff's Association v. County of Riverside, 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 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.)

[5] I express no opinion as to whether PERB would have the authority under the MMBA to evaluate a party's compliance with SB 402 in any case.

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).)

THOMAS J. ALLEN
Administrative Law Judge