STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF SAN JOSE, Charging Party, v. ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS, Respondent.	Case No. SF-CO-168-M PERB Decision No. 2141-M November 10, 2010

Appearances: Robert Fabela, Senior Deputy City Attorney, for City of San Jose; Wylie, McBride, Platten & Renner by Carol L. Koenig, Attorney, for Association of Building, Mechanical and Electrical Inspectors.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the City of San Jose (City) to the proposed decision of an administrative law judge (ALJ) dismissing the complaint and underlying unfair practice charge. The complaint alleged that the Association of Building, Mechanical and Electrical Inspectors (ABMEI) violated the Meyers-Milias-Brown Act (MMBA)[1] by picketing four private construction sites on three separate days. The complaint alleged that this conduct constituted unlawful pressure tactics and thus a failure and refusal to meet and confer in good

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

faith, in violation of Sections 3505 and 3509(b), and PERB Regulation 32604(c).[2] The ALJ dismissed the complaint on the ground that the MMBA does not contain language prohibiting secondary picketing.

The Board has reviewed the proposed decision and the record in light of the City's exceptions,[3] ABMEI's response to the exceptions, and the relevant law. Based on this review, the Board reverses the proposed decision for the reasons discussed below.

BACKGROUND

This case was submitted based upon stipulated facts and the City's exhibits admitted without objection.

ABMEI is the exclusive representative of a bargaining unit of approximately 90 building inspectors employed by the City. The primary job of the building inspectors is to conduct building, mechanical, electrical, and plumbing inspections for construction projects in the City. All private residential and commercial construction sites requiring building permits are subject to inspections by the building inspectors. Developers and contractors are not permitted to substitute these City inspectors with inspectors of their own choosing; they must use City building inspectors or choose from a list of qualified companies to hire an inspector to perform specialized inspections when they cannot be performed by City inspectors.

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

[3] The City requested oral argument in this matter. Historically, the Board has denied requests for oral argument when an adequate record has been prepared, the parties had ample opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear to make oral argument unnecessary. (*United Teachers of Los Angeles (Valadez, et al.)* (2001) PERB Decision No. 1453; *Monterey County Office of Education* (1991) PERB Decision No. 913.) Based on our review of the record, all of the above criteria are met in this case. Therefore, the City's request for oral argument is denied.

The City and ABMEI operated under a memorandum of agreement that expired on October 19, 2007. Beginning September 5, 2007, the City and ABMEI entered into bargaining for a successor memorandum of agreement.

On October 22, 2007, ABMEI distributed an "On Strike" flyer that stated:

> As of today, the Inspectors Union (ABMEI) is ON STRIKE. All items have been resolved in negotiations save one – City Management wants us (and other Unions), to give up our right to Binding Arbitration when we feel an employee has been fired unjustly. WE WILL NOT GIVE UP THIS RIGHT. We proved in the courts that ALL Unions have this right, and now they want us to negotiate it away.
>
> NO!!!! So we are now ON STRIKE. We are in our 3-day cooling-off period, but come Thursday every construction site in the City will come to a halt, until this issue is resolved. If YOU got fired TODAY, for no good reason, wouldn't you like someone to stick up for YOU? Our members say YES, and for that we are willing to fight. Keep us in your thoughts.
>
> This is an informational pamphlet only – if you are signatory to a Union Agreement, we do NOT ask that you honor our picket lines Thursday. But know that our cause is just, and we shall prevail. Thank you for your help.
>
> Sincerely,
> The Inspectors Union
> ABMEI

(Emphasis in original.)

The same day, ABMEI Lead Negotiator Steve Stender (Stender) sent a letter to Gina Donnelly, city employee relations officer, stating that the informational handout concerning the strike "may have been premature." Stender informed the City that the ABMEI membership would continue working during negotiations.

The parties were unable to reach agreement on the terms and conditions of a successor memorandum of agreement and, after ABMEI and the City declared impasse, they agreed to enter into mediation.

During the period from October 22 through November 28, 2007, the City and ABMEI participated in impasse procedures pursuant to MMBA section 3505 and in compliance with the Local Rules of the City.

The impasse procedures were completed on November 28, 2007, at which time the parties had not come to an agreement. ABMEI went on strike against the City on November 29. The City hired non-employees to perform the work of the bargaining unit members represented by ABMEI. Those non-employees began performing the work on or about December 3.

The striking workers carried signs that stated "ABMEI On Strike Against the City of San Jose." The striking workers picketed outside of City Hall during the first week of the strike.

On December 6, 2007, ABMEI members picketed in front of the private construction site of Three Sixty Residences, located on South Market Street in San Jose, carrying the same signs. This resulted in most of the construction on that day shutting down, except for a crane operator who was already on the job. Presumably, the private construction workers chose not to cross the picket line.

On December 6, 2007, ABMEI members picketed the private construction site of EBay Development, located on Onel Drive in San Jose. This caused the construction work at EBay Development to shut down that day, presumably because the private construction workers chose not to cross the picket line.

On December 7, 2007, ABMEI's members again picketed the private construction site of Three Sixty Residences. Once again this caused the construction site to shut down that day, presumably because the private construction workers chose not to cross the picket line.

On December 7, 2007, ABMEI members picketed the private construction site known as Tamien Place Condominiums in San Jose. This caused about half the job to shut down.

On December 10, 2007, ABMEI's members picketed the private construction site known as Axis Building, located at 38 Almaden Boulevard in San Jose. This caused all but work done by non-union concrete and glass workers to shut down.

The general contractors and subcontractors performing work at the above private construction sites were not City employees.[4] The construction projects at these sites were not part of any City construction/public works project. The construction projects at these sites could not be completed without passing inspections conducted either by City inspectors or by individuals designated or approved by the City to conduct inspections.

During the picketing, ABMEI and the City continued to negotiate over the terms of a successor agreement. The City and ABMEI met on days of the picketing. The parties agreed to meet and negotiate during the picketing, and did meet and negotiate each and every time either party requested a meeting.

In a news article posted by the *San Jose Mercury News* on December 7, 2007, ABMEI President Tom Brim (Brim) was quoted as saying, "This morning began the second week, we called for phase two, . . . Hopefully, we'll never have to go to phase three and four."

An article posted by *NBC 11* dated December 10, 2007, stated that, according to Brim, the picketing was "an effort to shut down work on the projects and show the city council and city administrators that more projects could be targeted." The article also quoted Brim as saying, "[i]f the issue is not resolved over the next few days, the union will hit as many as 15 construction[] sites."

[4] There is no evidence in the record to indicate that any representatives of the City were present and working at the private construction sites during the picketing.

ABMEI and the City reached agreement on a new memorandum of agreement on December 11, 2007. The picketing ceased.

PARTIES' CONTENTIONS

The City contended before the ALJ and on appeal that the picketing of private construction sites for the purpose of placing pressure on the City to settle its labor dispute constituted an unlawful pressure tactic in violation of MMBA sections 3505 and 3509(b), and PERB Regulation 32604(c). ABMEI contended before the ALJ and on appeal that its picketing was constitutionally protected free speech and assembly, that it did not fail or refuse to engage in good faith bargaining, and that its picketing of private construction sites was not unlawful. The ALJ determined that, because there is no language in the MMBA making ABMEI's conduct an unfair practice, the City failed to meet its burden of proof that ABMEI violated any provision of the MMBA. On appeal, the City also contends that the ALJ erred in failing to find ABMEI's conduct to be unlawful secondary picketing and in concluding that ABMEI's conduct was arguably a protected sympathy strike. ABMEI disagrees and contends that the ALJ was correct in making this finding.

DISCUSSION

The issue in this case is whether ABMEI violated the MMBA by picketing at private construction sites in a manner that caused work on those sites to shut down. The MMBA, like the other statutes administered by PERB, does not specifically address the legality of either strikes or picketing. (See *County Sanitation Dist. No. 2 v. Los Angeles County Employees' Assn.* (1985) 38 Cal.3d 564, 573 (*County Sanitation*) [MMBA provides no "clear legislative directive" on the right to strike].) Moreover, unlike the Educational Employment Relations

Act (EERA),[5] the Higher Education Employer-Employee Relations Act (HEERA),[6] and the Ralph C. Dills Act (Dills Act),[7] the MMBA does not specifically define any unfair practices, but imposes a mutual obligation on the public agency and representatives of recognized employee organizations to meet and confer in good faith. (§ 3505.) By regulation, PERB has made it an unfair practice for an employee organization under the MMBA to "[r]efuse or fail to meet and confer in good faith as required by Government Code section 3505 or by any local rule adopted pursuant to Government Code section 3507." (PERB Reg. 32604(c).)

Notwithstanding the absence of any specific statutory language in the MMBA addressing the right to strike, it is now well established that certain public sector strikes are lawful. (*County Sanitation* at pp. 572-573.) Likewise, it is well established that "the right to picket peaceably and truthfully is one of organized labor's lawful means of advertising its grievances to the public, and as such is guaranteed by the Constitution as an incident of freedom of speech." (*Pittsburg Unified School Dist. v. California School Employees Assn.* (1985) 166 Cal.App.3d 875, 891 (*Pittsburg*).) However, "[p]icketing can nevertheless be regulated because it involves not only speech but also an element of conduct." (*San Marcos Unified School District* (2003) PERB Decision No. 1508 (*San Marcos*), citing *Miller v. UFCW Local 498* (9th Cir. 1983) 708 F.2d 467, 471.) The issue presented here is what limits, if any, exist on the right of employee organizations to engage in peaceful picketing that induces employees of third party employers to cease performing work.

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[5] EERA is codified at Section 3540 et seq.

[6] HEERA is codified at Section 3560 et seq.

[7] The Dills Act is codified at Section 3512 et seq.

Concerted Activities and the Duty to Bargain in Good Faith

As indicated above, the MMBA imposes an obligation on both employers and recognized employee organizations to meet and confer in good faith regarding wages, hours and other terms and conditions of employment. (§ 3505.) The conduct of the parties away from the bargaining table is relevant to determining whether a party has fulfilled its obligation to negotiate in good faith. (*Radisson Plaza Minneapolis v. NLRB* (8th Cir. 1993) 987 F.2d 1376, 1381.) Concerted activities such as strikes may constitute "illegal pressure tactics" that demonstrate a lack of good faith in the bargaining process. (*San Diego Teachers Assn. v. Superior Court of San Diego County* (1979) 24 Cal.3d 1, 8 (*San Diego Teachers*).) Thus, in considering whether a teachers' strike could constitute an unfair practice, the California Supreme Court stated:

> The question of negotiation in good faith is resolved by determining whether there was a genuine desire to reach agreement. (*Placentia Fire Fighters v. City of Placentia* (1976) 57 Cal. App. 3d 9, 23 [129 Cal. Rptr. 126] (construing Meyers-Milias-Brown Act, § 3505).) Under the NLRA a strike does not itself violate the duty to confer in good faith because '[the] presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized.' (*Labor Board v. Insurance Agents* (1960) 361 U.S. 477, 489 [4 L. Ed. 2d 454, 464, 80 S. Ct. 419]; cf. *Lamphere Sch. Dist. v. Lamphere Fed. of Tchrs.* (1976) 67 Mich. App. 485 [241 N.W. 2d 257] (teachers' strike did not establish failure to bargain in good faith).) Thus if [the union's] strike were held *legal* it would not constitute a failure to negotiate in good faith. As an *illegal* pressure tactic, however, its happening could support a finding that good faith was lacking.
>
> An unfair practice consisting of '[refusal] to participate in good faith in the impasse procedure' (§ 3543, subd. (d)) could be evidenced by a strike that otherwise was legal.

(*San Diego Teachers* at p. 8; emphasis added.)

PERB has exclusive initial jurisdiction to determine what conduct amounts to an unlawful pressure tactic constituting a refusal to bargain in good faith. (*San Diego Teachers* at p. 14; *Compton Unified School District* (1987) PERB Order No. IR-50 *(Compton)*.) Moreover, PERB is not limited to explicit statutory prohibitions in finding activity to be bad faith bargaining. (*Leek v. Washington Unified School Dist.* (1981) 124 Cal.App.3d. 43, 48-49; *Compton.*) Thus, PERB has held, even where the objective of a strike is lawful, the means used to carry out that objective may be unlawful. (*San Ramon Valley Unified School District* (1984) PERB Order No. IR-46 (*San Ramon*).)

PERB has held certain concerted activities may constitute unlawful pressure tactics that violate the duty to bargain in good faith. Examples include pre-impasse strikes not provoked by unfair practices (*Sacramento City Unified School District* (1987) PERB Order No. IR-49 (*Sacramento City*); *Rio Hondo Community College District* (1983) PERB Decision No. 292); pre-impasse strike threats and preparations (*South Bay Union School District* (1990) PERB Decision No. 815; *Regents of the University of California* (2010) PERB Decision No. 2094-H (*Regents of the UC*)[8]); post-impasse intermittent and surprise strikes (*San Ramon*; *Fremont Unified School District* (1990) PERB Order No. IR-54 (*Fremont*)); and partial work stoppages (*Palos Verdes Peninsula Unified School District* (1982) PERB Decision No. 195; *El Dorado Union High School District* (1985) PERB Decision No. 537 (*El Dorado*); *Los Angeles Unified School District* (1990) PERB Decision No. 803; *Modesto City Schools* (1983) PERB Decision No. 291.)[9]

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[8] On October 7, 2010, the First District Court of Appeal summarily affirmed the Board's decision in *Regents of the UC*.

[9] When interpreting the MMBA, it is appropriate for PERB to take guidance from decisions interpreting other statutes under PERB's jurisdiction that contain similar provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 617.)

The legality of California public sector picketing has been addressed in only a few cases. Non-disruptive informational picketing is generally regarded as protected activity. (*Pittsburg*; *San Marcos*.) In *Pittsburg*, a court of appeal held that picketing the private business offices of members of the governing school board did not violate EERA, where the picketers did not block ingress or egress from the buildings and no one was otherwise discouraged from entering the members' business premises or from doing business with them. (*Pittsburg*, at p. 886.) Similarly, in *San Marcos*, the Board held that non-disruptive informational picketing outside a city hall prior to public meetings of the city's governing board was protected both under EERA and by constitutional free speech principles. Consequently, the employer violated EERA when it threatened to discipline employees for engaging in such picketing.

In *Fresno Unified School District* (1982) PERB Decision No. 208 (*Fresno*), the Board, adopting federal standards developed under the National Labor Relations Act (NLRA), held that the determination of whether picket line misconduct during a strike constitutes coercion and intimidation is an objective one, i.e., whether the misconduct "may reasonably tend to coerce or intimidate employees in the exercise of their rights." (Citing *International Union of Operating Engineers v. NLRB* (3rd Cir. 1964) 328 F.2d 850; *NLRB v. W. C. McQuaide, Inc.* (3rd Cir. 1977) 552 F.2d 519.) Applying this standard, the Board held that picket line conduct consisting of making verbal comments to non-striking employees who crossed the picket lines, photographing and taking down non-striker license numbers, and causing brief delays in getting in and out of parking lots could not reasonably be considered threatening. Therefore, the Board concluded, the union did not unlawfully coerce or threaten employees who exercised their right to refrain to participating in the strike.

In *El Dorado*, the Board expressly declined to consider whether picketing by teachers before school hours violated EERA, but found that the picketing amounted to an unlawful partial work stoppage, since it occurred during times when the teachers were required to be available for parent conferences and other duties immediately preceding the start of class.

The disruptive nature of the picketing distinguishes the facts of this case from *Pittsburg, San Marcos* and other decisions holding non-disruptive informational picketing to be protected activity. Not only did the picketing in this case enmesh neutral third parties in ABMEI's dispute with the City, it caused substantial disruption to those entities by effectively shutting down four private construction sites. Unlike in *Pittsburg* and *San Marcos*, the picketing was not directed at individual members of the City's governing board or their private businesses. The court in *Pittsburg* emphasized that no employees or clients were prevented or discouraged from entering the premises and there was no evidence that the picketing actually affected their economic well-being adversely. (*Pittsburg* at pp. 893-894.) Here, the picketing was directed at private employers with the object of inducing private employees to refuse to work, shutting down private construction sites. Such conduct goes far beyond the non-disruptive picketing sanctioned in *Pittsburgh* and *San Marcos*, and was an unfair tactic designed to put undue pressure on the City to sign a contract with ABMEI, which it did five days after the construction site picketing commenced. Moreover, given the fact that the inspectors possessed direct regulatory control over the construction projects they picketed, we find these tactics were particularly coercive. As noted by ABMEI in its post-hearing brief before the ALJ:

> The strategy of picketing at the private construction sites was highly effective. The targeted construction[] projects were almost totally shutdown during the picketing and five days after the picketing of the private job sites began, the parties settled the MOU.

In light of the coercive nature of the picketing by ABMEI, it is not surprising that this strategy was effective. However, by picketing neutral private employers, ABMEI's conduct in this case both violated the public trust and placed the City at an unfair disadvantage in negotiations. Clearly, the City has no control over the activities of private employees. Consequently, it had no way of effectively responding to the work shutdowns other than to accede to ABMEI's demands to sign a contract. The disruption of the business of neutral third parties is inconsistent with the public interest in promoting harmonious labor relations as well as the efficient delivery of public services. Accordingly, we conclude that the picketing of private construction sites with the effect of shutting them down was an unfair pressure tactic in violation of the MMBA.

Public Interest Concerns

In reaching this conclusion we note that, while much of California's public sector collective bargaining law has been modeled after the NLRA, the federal law governing the private sector, important differences exist. Unlike in the private sector, the statutes governing collective bargaining in the public sector serve not only the interests of the public employer and its employees, but also "express[] a legislative determination that the process of collective negotiations furthers the public interest by promoting the improvement of personnel management and employer-employee relations" within the public sector. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 862.) As noted by the Board, "[u]nlike the private sector, the public sector, by its nature, involves public interest." (*Fremont* at p. 12.) Thus, MMBA section 3500(a) states as one of its purposes

> to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of

> their own choice and be represented by those organizations in their employment relationships with public agencies.

In recognition of this public interest, both PERB and the courts have considered the impact of protected activity on third parties. For example, the Board in *Compton* found a teacher strike unlawful where "the strike was employed to cause a total breakdown of two discrete activities that are guaranteed by statute and case law: (1) basic education for students and (2) negotiations free from coercive tactics that hold hostage that education." (Concurring opinion of Member Hesse, at p. 167.) Thus, the Board found that the coercive effect of the strike on bargaining resulted in a "total inability of the District to provide even basic, minimum-day education" was "an example of the 'larger harm' stemming from a teachers' strike that the Supreme Court expressly permits PERB to address." (*Ibid.* at pp. 167-168, citing *El Rancho Unified School Dist. v. National Education Assn.* (1983) 33 Cal.3d 946, 957.) Concerted activity that has an adverse impact on third parties was also recognized in *County Sanitation* (holding certain essential employee strikes unlawful), *Regents of the UC* (recognizing that whether a strike at a health care institution poses an imminent threat to public health or safety is to be determined on a case-by-case basis),[10] and *International Longshoremen's Assn. v. Allied Int'l* (1982) 456 U.S. 212, 223 (refusal to unload ships engaged in trade with the U.S.S.R. in protest of Afghanistan invasion embroiled unoffending employers in a controversy not their own). Similarly, the picketing in this case harmed the public interest by enmeshing neutral employers in ABMEI's dispute with the City.

[10] Ultimately, the Board did not reach this issue, finding instead that a strike threat and preparations prior to exhaustion of statutory impasse procedures was an unfair practice.

Absence of Statutory Language Prohibiting Secondary Boycotts

We turn now to ABMEI's assertion that, because the MMBA does not expressly prohibit "secondary boycott" activity, such conduct is outside the scope of PERB's review. Section 8(b)(4)(b) of the NLRA contains specific prohibitions against certain types of secondary activity, including picketing "secondary," or neutral, employers with the object of forcing them to cease doing business with the primary employer. (29 U.S.C. § 158(b)(4)(b).) "Secondary boycott activities are those which are calculated to involve neutral employers and employees in the union's dispute with the primary employer." (*Iron Workers Dist. Council of Pacific Northwest v. NLRB* (9th Cir. 1990) 913 F.2d 1470, 1475.) The Agricultural Labor Relations Act (ALRA), enacted after the MMBA, contains a similar prohibition against secondary activities. (Labor Code, § 1154(d).) As noted above, the MMBA and all of the statutes administered by PERB are completely silent on the issue of both strikes and picketing.

We do not find the absence of specific language in the MMBA prohibiting secondary picketing to preclude our finding that ABMEI's activities in this case constituted an unlawful pressure tactic in violation of the MMBA. First, it is well established that PERB has broad authority to identify unfair pressure tactics that undermine the collective bargaining process, even if such conduct is not specifically prohibited by the governing statute, most notably in the area of strikes, which are not addressed at all in the MMBA or any other statute administered by PERB. (*San Diego Teachers.*) Second, both the NLRA and the ALRA address labor relations between private employees and their employers, and the secondary boycott provisions contained in those statutes also protect private secondary employers. The MMBA and other statutes administered by PERB, on the other hand, govern only the conduct of public employers and employees and, as such, are also designed to protect the interest of the public in the continued delivery of public services. (*Compton*; *County Sanitation*; *Fremont*).

Third, as noted by PERB in *Regents of the UC*, important differences exist between private and public sector collective bargaining. For example, unlike in the California public sector, the pre-impasse economic strike "is not an unfair practice under the NLRA unless it violates one of the Act's prohibitions on specific strike activity." (*Regents of the UC.*) In contrast, a pre-impasse strike in the California public sector creates a rebuttable presumption that the employee organization is refusing either to negotiate in good faith or to participate in statutory impasse procedures in good faith. (*Ibid.*, citing *Sacramento City*; *Westminster School District* (1982) PERB Decision No. 277; *Fresno*; *Fremont Unified School District* (1980) PERB Decision No. 136.) Private employers also enjoy the right to employ economic weapons that are effectively unavailable in the public sector, such as the lockout and the ability to hire permanent replacement workers. (*Regents of the UC*; *Fremont, supra,* PERB Order No. IR-54.) Thus, unlike in the private sector, California's public sector collective bargaining statutes do not establish a similar scheme of unregulated economic weapons, but instead vest in PERB the discretion and authority to determine whether a party has bargained in good faith and to prohibit conduct that places undue pressure disruptive of the bargaining process.[11] Therefore, given PERB's broad authority under the MMBA to regulate conduct that disrupts the bargaining process, the absence of a specific statutory prohibition against secondary boycotts is not dispositive of this case.

Sympathy Strike Argument

Finally, we address ABMEI's contention that the ALJ was correct in concluding that it was "at least arguable that the private construction site employees who honored

[11] Because we find that ABMEI's conduct was an unfair pressure tactic under the MMBA, we need not and do not reach the issue of whether it would also be prohibited under section 8(b)(4) of the NLRA.

[ABMEI's] picket line engaged in a sympathy strike," citing *Oxnard Harbor District* (2004) PERB Decision No. 1580-M (*Oxnard*). The term "sympathy strike" "ordinarily refers to a strike conducted by workers belonging to one bargaining unit in support of a primary strike that is conducted by workers belonging to another bargaining unit at the same plant or shop." (*Children's Hosp. Med. Ctr. v. Cal. Nurses Ass'n.* (9th Cir. 2002) 283 F.3d 1188, 1191.) In *Oxnard*, the Board held that employees of the Oxnard Harbor District represented by the Service Employees International Union did not violate a contractual general no-strike clause when they engaged in a sympathy strike by refusing to cross an informational picket line of the International Longshore and Warehouse Union (ILWU) against another employer working at the harbor. In so doing, the Board noted that the Oxnard Harbor District provided the work location for the ILWU employees and that there was no indication that the ILWU picket line was an attempt to conduct a secondary strike or boycott prohibited under the NLRA.

Here, however, the conduct of the private employees is not at issue. Thus, it is irrelevant whether their conduct was privileged as a "sympathy strike" or otherwise. Moreover, unlike in *Oxnard*, this is not a case in which the City provided the work location for the striking employees. Rather, the striking employees chose to picket a wholly neutral employer in order to cause it to cease doing business with the City.

Based upon the foregoing authorities, we conclude that ABMEI engaged in unlawful pressure tactics when it engaged in picketing of private construction sites that caused the disruption of work at those sites.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the Association of Building, Mechanical and Electrical Inspectors (ABMEI) violated the Meyer-Milias-Brown Act (MMBA), Government Code sections 3505 and 3509(b), and Public Employment Relations Board (PERB) Regulation 32604(c) (Cal. Code Regs., tit. 2, § 31001 et seq.), by picketing at private construction sites and causing private employees to cease performing work. Therefore, pursuant to MMBA section 3509(b), it is hereby ORDERED that ABMEI, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

Picketing any private construction site within the City of San Jose (City) in a manner that causes employees of private employers to cease performing work.

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

1. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all locations where notices to employees are customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of ABMEI, indicating ABMEI will comply with the terms of this Order. 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.

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB, or the General Counsel's designee. ABMEI shall

provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the City.

Members McKeag and Wesley 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. SF-CO-168-M, *City of San Jose v. Association of Building, Mechanical and Electrical Inspectors*, in which all parties had the right to participate, it has been found that the Association of Building, Mechanical and Electrical Inspectors violated the Meyers-Milias-Brown Act, Government Code section 3500 et seq., and PERB Regulation 32604(c) by picketing at private construction sites and causing private employees to cease performing work.

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

CEASE AND DESIST FROM:

Picketing any private construction site within the City of San Jose in a manner that causes employees of private employers to cease performing work.

Dated: _____

ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS

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.