STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Charging Party, v. CITY OF REDDING, Respondent.	Case No. SA-CE-553-M PERB Decision No. 2190-M June 30, 2011

Appearances: Weinberg, Roger & Rosenfeld by Matthew J. Gauger, Attorney, for Service Employees International Union, Local 1021; Liebert, Cassidy & Whitmore by Adrianna E. Guzman, Attorney, for City of Redding.

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

DECISION

McKEAG, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the City of Redding (City) to a proposed decision (attached) by an administrative law judge (ALJ). The complaint issued by PERB's Office of the General Counsel alleged that the City violated the Meyers-Milias-Brown Act (MMBA)[1] when it refused to provide Service Employees International Union, Local 1021 (SEIU), with a copy of an investigative report. The ALJ concluded that the City unlawfully refused to provide the report and ordered the City to provide it to SEIU with employee names and other identifying information redacted.

The Board has reviewed the entire record in this matter and finds the proposed decision well-reasoned, adequately supported by the record and in accordance with applicable law.

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

Accordingly, the Board adopts the proposed decision as the decision of the Board itself, subject to the following brief discussion regarding the balancing of interests in information request cases.

DISCUSSION

As indicated in the proposed decision, personal privacy rights may limit an otherwise lawful demand for production of information held in confidence. In such cases, the Board applies a balancing test that weighs a union's need and interest in obtaining the information against the employer/employee's privacy and confidentiality interests. (*Los Rios Community College District* (1988) PERB Decision No. 670).

The dissent argues that SEIU's interest in obtaining the report is slight because it had direct access to the employees who initially raised the issues that were investigated. We respectfully disagree and find that SEIU's access to witnesses does not marginalize its interest in obtaining investigative reports in this case. Accordingly, consistent with *State of California (Department of Veterans Affairs)* (2004) PERB Decision No. 1686-S, we find that disclosure of the investigative reports and witness statements gathered during each investigation is warranted, subject to redaction/deletion of all employee names and other identifying information in such documents.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in the case, it is found that the City of Redding (City) violated the Meyers-Milias-Brown Act (MMBA) when it refused to supply the investigative reports concerning Dixie Green (Green) harassment complaint and general customer service representative workplace issues, and the witness statements accompanying each report, with employee names redacted and other identifying information, to Service Employees International Union, Local 1021 (SEIU) after its

requests therefor. By this conduct, the City failed to negotiate in good faith with SEIU in violation of MMBA sections 3505 and 3509(b) and PERB Regulation 32603(c);[2] denied the right of SEIU to represent bargaining unit employees in violation of MMBA sections 3503 and 3509(b) and PERB Regulation 32603(b); and interfered with the rights of bargaining unit employees to be represented by SEIU in violation of MMBA sections 3506 and 3509(b) and PERB Regulation 32603(a).

Pursuant to Government Code sections 3509(b) and 3541.3, it hereby is ORDERED that the City and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to negotiate in good faith with SEIU by refusing to provide it with information relevant and necessary to its duties as the exclusive representative.

2. Denying SEIU its right to represent bargaining unit employees.

3. Interfering with the rights of bargaining unit employees to be represented by SEIU.

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

1. Provide copies to SEIU, of the investigative reports concerning Green's harassment complaint and general customer service representative workplace issues, and witness statements accompanying each report, with employee names redacted and other identifying information.

2. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post copies of the Notice attached hereto as an Appendix at all work

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

locations where notices to employees represented by SEIU are customarily posted. The Notice must be signed by an authorized agent of the City, indicating that the City 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.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The City 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 SEIU.

Chair Martinez joined in this Decision.

Member Dowdin Calvillo's dissent begins on page 5.

DOWDIN CALVILLO, Member, dissenting: I respectfully dissent.

> When a party files a statement of exceptions to an ALJ's proposed decision, the Board reviews the record de novo, and is empowered to reweigh the evidence and draw its own factual conclusions. Although the Board generally gives deference to the ALJ's credibility determinations, which may be based on considerations such as witness demeanor (*Beverly Hills Unified School Dist* (1990) PERB Dec. No. 789 [14 PERC ¶ 21042]), it is not bound by the ALJ's evaluation of the weight to be given to disputed evidence. '[T]he [Board], not the hearing officer, is the ultimate fact finder, entitled to draw inferences from the available evidence.'

(*California Teachers Assn. v. Public Employment Relations Bd.* (2009) 169 Cal.App.4th 1076, 1086-1087, quoting *McPherson v. Public Employment Relations Bd.* (1987) 189 Cal.App.3d 293, 304.)

1. Relevant Law

An exclusive representative "is entitled to all information that is necessary and relevant to discharging its duty to represent unit employees" in negotiations, processing of grievances, and administration of the contract. (*Stockton Unified School District* (1980) PERB Decision No. 143; *Modesto City Schools and High School District* (1985) PERB Decision No. 479.)[1] Absent a valid defense, an employer's refusal to provide such information upon request is a per se violation of the employer's duty to meet and confer in good faith. (*City of Burbank* (2008) PERB Decision No. 1988-M; *Stockton Unified School District*, *supra*.)

The Public Employment Relations Board (PERB or Board) uses a liberal standard, similar to a discovery-type standard, to determine the relevance of the requested information. (*Trustees of the California State University* (1987) PERB Decision No. 613-H.) Information about bargaining unit members' terms and conditions of employment is presumptively

[1] When interpreting the Meyers-Milias-Brown Act, 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.)

relevant. (*State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S.) Hence, information that is necessary for an exclusive representative to decide whether to proceed with a grievance on behalf of a bargaining unit member is presumed relevant. (*City of Burbank*, *supra*; *Town of Paradise* (2007) PERB Decision No. 1906-M.) Such information may be relevant even though the exclusive representative is able to present the grievance without it. (*Newark Unified School District* (1991) PERB Decision No. 864.)

An exclusive representative's right to information is not absolute. (*State of California (Departments of Personnel Administration and Transportation)*, *supra.*) A respondent is not obligated to provide information when disclosure of the information would compromise a recognized right of privacy or a legitimate confidentiality interest. (*Modesto City Schools and High School District*, *supra.*) If the respondent establishes a legitimate and substantial confidentiality interest in the information sought, PERB must balance the requestor's need for the information against the confidentiality interest to determine whether the respondent is required to provide the information. (*Ibid.*; *Los Rios Community College District* (1988) PERB Decision No. 670; *Detroit Edison Co. v. National Labor Relations Bd.* (1979) 440 U.S. 301, 318-320.)

PERB has applied these legal standards in two cases in which an exclusive representative requested an internal investigation report. In *State of California (Department of Veterans Affairs)* (2004) PERB Decision No. 1686-S, the employer investigated alleged misconduct by a supervisor. The Board held that the investigation report was necessary and relevant to the exclusive representative's duty to represent bargaining unit members on issues of workplace safety that arose from the supervisor's conduct. The Board further held that the report was not privileged from disclosure under either the attorney-client privilege or the

California Public Records Act, and that the supervisor had no reasonable expectation of privacy in witness statements about him because the witnesses had already made similar statements about him to the exclusive representative. Noting that each information request case must be decided on its facts, the Board ordered the employer to provide the entire report as requested.

The Board reached the opposite conclusion in *State of California (Department of Consumer Affairs)* (2004) PERB Decision No. 1711-S, a case involving the investigation of allegedly threatening behavior by a license applicant. As in *State of California (Department of Veterans Affairs)*, *supra*, the Board held that the report was necessary and relevant to the exclusive representative's representational duties because the investigation involved workplace safety matters. However, unlike the earlier case, the Board held that the applicant's privacy interests outweighed the exclusive representative's need for the report. The Board found the exclusive representative's interest was slight because the employer had taken action to mitigate potential danger to employees and the applicant's threatening conduct ceased after it did so. On the other hand, the Board found the applicant's privacy interest substantial because the investigation involved inquiries with various law enforcement agencies, including the Governor's protective detail. On these facts, the Board held that the employer had no duty to provide the investigation report to the exclusive representative.

2. Necessary and Relevant Information

Applying the legal standards articulated above, I agree with the majority that the report summarizing the findings of outside investigator Diane Davis' (Davis) customer service representative (CSR) investigation is necessary and relevant to the Service Employees International Union, Local 1021's (SEIU) duty to represent bargaining unit employees.

3. The City of Redding's (City) Confidentiality Claim

Concerning the confidentiality claim, I agree with the City that the administrative law judge (ALJ) did not adequately address this issue in her proposed decision because she relied solely on *State of California (Department of Veterans Affairs)*, *supra*, without considering the facts of this case. (See *Chula Vista City School District* (1990) PERB Decision No. 834 [noting that each information request case turns on the particular facts involved].) The City's Harassment, Discrimination, & Retaliation Policy and Complaint Procedure provides that the City will maintain confidentiality during the investigation process to the extent possible. It also states limited grounds on which the City will disclose a completed investigation report. Further, Davis, the investigator, told each employee she interviewed that the content of the interview would remain confidential. An employer's promise to employees that certain information will remain confidential establishes a legitimate and significant confidentiality interest that must be balanced against the requestor's need for the information. (*Northern Indiana Public Service Co.* (2006) 347 NLRB 210, 214; *Detroit Edison Co. v. NLRB*, *supra*, 440 U.S. at p. 319.) Thus, PERB must balance SEIU's need for Davis' investigation report against the City's interest in maintaining the confidentiality of the report.

4. Balancing of Interests

In its information requests, SEIU asserted it needed the report to determine whether CSR issues had been resolved and to evaluate allegations of hostile work environment, harassment, and unfair work assignments. Yet SEIU had access to the CSRs who initially raised the issues that were investigated. Further, SEIU met with CSRs shortly after receiving the July 22, 2008 letter from Personnel Director Linda Johnson and Redding Electric Utility Director James Feider, outlining the changes made as a result of the report, and therefore had access to information about whether the CSR issues had been resolved. SEIU thus had, or

could obtain, sufficient information from the CSRs themselves to evaluate whether to proceed with a grievance over any of the concerns raised by CSRs during the investigation.

SEIU Field Services Supervisor Ian Arnold (Arnold) testified, however, that CSRs refused to sign on to a grievance for fear of retaliation by management. None of the three CSRs who testified, however, said that she feared retaliation or that she was reluctant to bring her concerns to SEIU. Indeed, all three witnesses were quite forthcoming with information about their working conditions at the PERB hearing. Because Arnold's testimony about CSRs' fear of retaliation is hearsay that is not corroborated by any of the CSRs' testimony, I cannot find that CSRs in fact had a fear of retaliation. (PERB Reg. 32176.)[4] Thus, because SEIU had direct access to the information it would need to file a grievance over CSR working conditions, I find that SEIU's interest in obtaining the report is slight.

The City argues in its exceptions that its confidentiality interest is strong because employees interviewed by Davis had a reasonable expectation of privacy in the statements they made to her based on the promise of confidentiality. Treating witness statements as confidential, whether transcripts of the statements themselves or an investigator's notes or summary of the statements, serves two purposes: "(1) encouraging witnesses to participate in investigations of workplace misconduct and (2) protecting these witnesses from retaliation because of their participation." (*Northern Indiana Public Service Co.*, *supra*, 347 NLRB at p. 212.) Further, "an employer's inability to reliably assure interviewees of confidentiality is likely to impede its investigations into workplace harassment or threats of violence and to deter the reporting of such incidents." (*Ibid.*)

[4] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32176 provides, in relevant part: "Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

In this case, Davis investigated both CSR Dixie Green's (Green) harassment allegations and allegations of workplace problems raised by CSRs during their interviews. It is undisputed that there were tensions between CSRs and their supervisors and managers during this time. Under these circumstances, CSRs may have been reluctant to speak with Davis absent an assurance of confidentiality. Without the assurance, the City may not have been able to adequately investigate the complaints. Thus, the assurance of confidentiality facilitated a thorough investigation of Green's and the CSRs' allegations. Moreover, there is no evidence that the confidentiality assurance was made to frustrate SEIU's ability to bring grievances on behalf of the CSRs. Based on the City's need to fully investigate allegations of harassment and other workplace issues, and the crucial role that an assurance of confidentiality plays in such an investigation, I find that the City's confidentiality interest in the report is strong. I therefore conclude that SEIU's interest in obtaining the report is outweighed by the City's confidentiality interest.

As discussed above, SEIU's access to the CSRs provided it with the opportunity to obtain sufficient information to file a grievance over CSRs' working conditions. Those CSRs who felt that a grievance was more important than maintaining the confidentiality of their statements to Davis could pursue one, while those who valued confidentiality more could abstain from participating in the grievance process. Furthermore, this case is not one where simple redaction of identifying information would protect the identity of the interviewee. Given that there were eight to ten CSRs in the customer service division at any given time, it is likely that the interviewee's identity could be determined merely by the substance of the statements made. Consequently, on these facts I conclude that the City's refusal to provide the investigation report or propose an accommodation did not violate its duty to meet and confer in good faith.

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. SA-CE-553-M, *Service Employees International Union Local 1021 v. City of Redding*, in which all parties had the right to participate, it has been found that the City of Redding violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. by refusing to provide information relevant and necessary to the representational responsibilities of Service Employees International Union, Local 1021 (SEIU), namely, the two investigative reports concerning a former customer service representative's harassment complaint and general customer service representative workplace issues alleged in this unfair practice case.

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

A. CEASE AND DESIST FROM:

1. Failing to negotiate in good faith with SEIU by refusing to provide it with information relevant and necessary to its duties as the exclusive representative.

2. Denying SEIU its right to represent bargaining unit employees.

3. Interfering with the rights of bargaining unit employees to be represented by SEIU.

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

1. Provide copies of the investigative reports at issue in unfair practice case No. SA-CE-553-M, and the witness statements accompanying each report, redacted of employee names and other identifying information, to SEIU.

Dated: _____ CITY OF REDDING

By: _____
Authorized Agent

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021, Charging Party, v. CITY OF REDDING, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-553-M PROPOSED DECISION (November 18, 2009)

Appearances: Weinberg, Roger & Rosenfeld, by Matthew J. Gauger, Attorney, for Service International Employees Union Local 1031; Liebert Cassidy Whitmore, by Adrianna E. Guzman, Attorney, and Richard A. Duvernay, Office of the City Attorney, for City of Redding.

Before Christine A. Bologna, Administrative Law Judge.

PROCEDURAL HISTORY

This case alleges failure to respond/refusal to provide requested information. The employer defends on confidentiality grounds.

On September 16, 2008, Service International Employees Union Local 1021 (SEIU or union) filed an unfair practice charge (UPC or charge) against the City of Redding (City or employer). On December 11, 2008, the Public Employment Relations Board (PERB or Board) General Counsel's Office issued an unfair practice complaint (complaint) alleging that the City failed to respond to SEIU's request for an investigative report involving employees working in the Customer Service Division, information which was relevant and necessary to the union's duty to represent employees, thereby refusing to meet and negotiate in good faith.[1] The complaint further alleged that the City's conduct violated Government Code sections 3503,

[1] The complaint also alleged derivative violations of SEIU's right to represent bargaining unit employees, and interference with unit employees' rights to be represented by the union.

3505, 3506, and 3509(b) of the Meyers-Milias-Brown Act (MMBA), and PERB Regulation 32603(a), (b), and (c).[2]

On December 29, 2008, the City answered the complaint, admitting three allegations, denying all substantive allegations, and asserting affirmative defenses. On March 16, 2009, an informal settlement conference was conducted but the dispute was not resolved.[3]

On August 5 and 6, 2009, formal hearing was held in Sacramento.[4] On November 12, 2009, the case was submitted for decision following receipt of post-hearing briefs.[5]

FINDINGS OF FACT

Jurisdiction

The City admits that it is a public agency within the meaning of Government Code section 3501(c) of the MMBA and PERB regulation 32016(a). The City also admits that SEIU is an exclusive representative of an appropriate bargaining unit of employees within the meaning of PERB regulation 32016(b).

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[2] Unless otherwise indicated, all statutory references are go the Government Code. The MMBA is codified at section 3500 et seq. PERB regulations are codified at California Code of Regulations, title 8, sections 31001 et seq.

[3] On March 19, 2009, the PERB General Counsel/Board agent issued a notice of partial withdrawal of interference allegations, based on Charging Party's December 11, 2008 electronic mail message (e-mail) withdrawing those charges.

[4] On June 2, 2009, Respondent City moved to dismiss the complaint. Charging Party SEIU opposed the motion on July 2. Respondent filed a reply brief on July 30. Respondent also filed a motion to quash three subpoenas. The motion to dismiss and motion to quash were denied at the beginning of the hearing.

[5] The parties mutually agreed to extend the briefing schedule three times, with post-hearing briefs to be filed on October 22, 2009. Respondent City filed its post-hearing brief that day. The 20-day period for filing optional reply briefs expired November 11, a holiday. Charging Party did not file a post-hearing brief, or otherwise respond to Respondent's e-mails on October 29 and November 2 inquiring when and if SEIU would file its brief. On November 6, Respondent requested that any post-hearing brief filed by Charging Party be rejected as untimely. The motion is granted.

General Background

SEIU/Redding Employee Organization is the exclusive representative for two City bargaining units: 268 clerical/technical/professional employees, and 122 supervisory/confidential employees. The City owns and operates the Redding Electric Utility (REU or Utility), which employs 185 employees; the Utility has a Customer Service Division employing eight to ten Customer Service Representatives, eight Customer Service Supervisors, and three Customer Service Managers. The Customer Service Representatives are assigned to the clerical/technical/professional bargaining unit; the Customer Service Supervisors are in the supervisory/confidential unit; and the Customer Service Managers are unrepresented.

Ian Arnold (Arnold) is a Field Services Supervisor employed by SEIU Local 1021. The City of Redding Chapter is part of Arnold's assignment and he supervises the local worksite organizer. Michael Lawrence (Lawrence) is a Senior Water Treatment Operator employed by the City. Lawrence is on the Chapter negotiating team and is the Chief Shop Steward. Rebecca Kraft (Kraft) is the former Chapter President and a Shop Steward.

James Feider (Feider) was the REU Director until he retired; Feider was succeeded by Paul Hauser (Hauser) in October 2008. Linda Johnson (Johnson) is the City Personnel Director. Richard Duvernay (Duvernay) is the City Attorney.

The first Memorandum of Understanding (MOU) between the City and SEIU Local 1021 became effective in April 1994. Several successor contracts have been negotiated, the last effective April 6, 2008 through June 30, 2013. The current agreement contains a grievance-arbitration procedure; provisions on management and union rights; a complete agreement ("zipper") clause; and a health and safety article. The existing MOU does not contain language on discrimination, retaliation, or harassment complaints.

The May 29, 2007 City policy and procedure prohibits City officials, officers, employees, and contractors from engaging in discrimination, harassment, and retaliation in City workplaces. A City employee or contractor may file a complaint with a supervisor or manager, a department director, or the Personnel Director verbally or in writing; the chain of command need not be followed.[6] Supervisors, managers, and directors must notify the Personnel Director about the complaint. The Personnel Director is authorized to investigate the complaint directly, or retain another investigator to conduct the investigation. The investigation includes meeting with the complainant and alleged harasser/discriminator(s), and interviewing any witnesses to the alleged conduct and other persons with relevant information. Confidentiality is maintained to the extent possible.[7] The results of the investigation are prepared in a written report, which includes summaries of witnesses' interview testimony; a determination of whether discrimination, harassment, or retaliation occurred; and a recommendation of effective remedial action if a violation of City policy is found. The employer will not disclose a completed investigation report except as necessary to support a disciplinary action; to take remedial action; to defend itself in adversarial proceedings; or to comply with the law or court order. There is no reference to representation, and/or a complainant's or witness' right to representation, during the investigation of the complaint in the City policy and procedure.

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[6] A complaint form is attached to the May 29, 2007 City policy and procedure.

[7] Complete confidentiality cannot occur due to the need to fully investigate and take effective remedial action. Individuals interviewed during an investigation cannot discuss the substance of the interview; violations are subject to discipline or other sanction. Individuals interviewed may obtain their statements/transcripts to review and correct their witness statements/testimony by signing a "limited release" that they will not copy the transcript or disclose the content of the interview. Transcripts must be returned within 14 business days. Witness statements/transcripts may also be reviewed in the Personnel Office without signing the release.

Background to Requests for Information

In January 2008, Customer Service Representative Dixie Green (Green) filed a harassment complaint. Personnel Director Johnson retained an outside private investigator, Diane Davis (Davis), to investigate the complaint that month.[8] Johnson told Davis to meet with Green, and identify the issues and witnesses. Davis updated Johnson on her progress in the investigation.

Later in January 2008, as a result of information obtained from witnesses during the investigation of the Green complaint, Personnel Director Johnson and REU Director Feider authorized a second investigation by Davis into general workplace concerns and issues raised by Customer Service Representatives, although no specific grievances had been filed by individual employees or SEIU on their behalf.

In February 2008, during successor contract negotiations, the City proposed creation of a new supervisory position, Customer and Field Service Trainer (Trainer), that would be added to the supervisory/confidential bargaining unit represented by SEIU Local 1021. The union opposed the new position because there were too many supervisors already and reporting lines were unclear.

In March or April 2008, Arnold presented a Customer Service Bill of Rights signed by Customer Service Representatives to the Redding City Council.

On March 28, 2008, the Redding City Manager sent a memorandum (memo) to all employees in the REU Customer Service Division advising that an independent investigation

[8] Johnson hired Davis two weeks before Green resigned from employment with the REU Customer Service Division.

by a private investigator would be conducted into issues and concerns raised by Customer Service Representatives.[9]

In April 2008, SEIU changed its position on the supervisory Trainer job classification (class), agreeing to meet and confer over it after Customer Service issues "were dealt with." The City proposed creation of the job class and salary range but would postpone recruitment until after Customer Service issues "were dealt with."[10]

On July 22, 2008, Personnel Director Johnson and REU Director Feider sent a letter to Kraft and Lawrence informing them that the investigation of Customer Service employee concerns had been completed, and the results summarized in a confidential report given only to Johnson, Feider, and City Attorney Duvernay. The letter further stated that as a result of issues addressed in the report, certain changes would be made. Supervisors would have a more traditional role, be assigned to specific areas within the Customer Service Division, and supervise an average of seven employees. First line supervisors would evaluate employees in their areas of responsibility. Records of Discussion would no longer be used. Supervisors could now go to lunch with subordinates. The letter asked for SEIU's support for directing bargaining unit members to use the chain of command to resolve problems before filing complaints with the union or Personnel Director. Kraft sent the letter to Arnold by facsimile transmission (fax). After Arnold conferred with Lawrence, they scheduled a meeting that

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[9] The memo noted that Personnel Director Johnson and REU Director Feider had retained the private investigator.

[10] The April 21, 2008 tentative agreement signed by Personnel Director Johnson and Kraft provided that the union agreed to meet and confer on job class specifications and salary for the Trainer position after ratification of the contract. The position would be assigned to the clerical/technical/professional bargaining unit represented by SEIU Local 1021. The position was never created. A Workforce Coordinator position, an existing job class previously approved by the union, was filled instead.

week with Customer Service Representatives to determine if all Customer Service issues had been resolved.[11]

Requests for Information

On July 28, 2008, after meeting with Customer Service Representatives, Arnold sent a letter to Personnel Director Johnson and REU Director Feider acknowledging union receipt of their response to Customer Service issues. The letter also requested copies of the initial report of the investigation, and any revised reports,[12] because SEIU Local 1021 was unable to assess whether the issues raised had been addressed. Arnold stated that in recent negotiations, the parties agreed to implement the new job class only when Customer Service issues had been resolved. Arnold also requested the information to determine the status of pending grievances.[13]

On August 6, 2008, Arnold and Lawrence met with Personnel Director Johnson and City Attorney Duvernay over the union's request for the investigative report(s). SEIU representatives told the City that the report was needed because the employer had stated that Customer Service Division issues were resolved, but Customer Service Representatives told the union their concerns were not solved. The report was also needed to further investigate certain issues in the Customer Service Division. Johnson stated that the investigation originated from the allegations of Green who had already resigned; it was expanded after Customer Service Representatives brought other issues to the City's attention; and the investigation was closed with the employer taking certain steps. Duvernay provided copies of

[11] Customer Service Representative Kathleen Case received a copy of this letter.

[12] Redding Chapter stewards informed Arnold that Johnson told City employees that she sent the report back to the investigator to rewrite parts of it.

[13] Johnson received the letter on July 30. She did not understand the reference to pending grievances since SEIU Local 1021 had not filed any grievances with the City.

the City policy, and stated why the report was confidential and could not be provided under City policy and the California Public Records Act.[14] Duvernay advised that the local newspaper had requested the report and the City had not provided it for the same reasons. Arnold responded that City policy allowed disclosure of the report to comply with state law, and if the union could show the requested information was necessary, the City had to provide it; the union needed the report to represent its members and decide whether to file grievances. Johnson replied that she was unaware of any grievances. The meeting ended without resolution.[15] The City did not provide the report.[16]

On August 6, 2008, Personnel Director Johnson sent a letter to Arnold confirming their meeting that day. The letter stated that the City could not share the investigative report with SEIU because City policy and procedure required confidentiality. There was no legal requirement to provide the report, and no compelling need for the union to have it because the union did not represent former employees. No grievances had been filed so only SEIU Local 1021 could determine if Customer Service Representative issues had been addressed by the recent changes implemented in the REU Customer Service Division.

On August 11, 2008, Arnold sent a letter to Personnel Director Johnson and REU Director Feider acknowledging the August 6 meeting. The letter requested copies of the original draft investigative report and the final revised report by August 18. Arnold asserted

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[14] Duvernay explained that no high level public official was involved; no discipline had been imposed; and no grievance had been filed as a result of the investigation.

[15] Arnold characterized the meeting as "heated." Duvernay disagreed, but acknowledged that both sides were frustrated.

[16] Johnson testified that Davis prepared two investigative reports: one addressing the harassment complaint filed by Green, and the second concerning general Customer Service Representative workplace issues. The witness statements of individuals interviewed during each investigation are a third and separate component of the reports.

that the report was sought due to member complaints of a hostile work environment; management harassment and mistreatment of employees; unfair work assignments; and unclear lines of supervision in the Customer Service Division, creating the perception of "quid pro quo."[17] The letter cited Government Code sections 3500 et seq. and 3504 as the basis for the request.

On August 20, 2008, City Attorney Duvernay responded to the August 11 letter. Duvernay pointed out that REU Director Feider was not at the August 6 meeting, and disputed several other statements in Arnold's letter.[18] Duvernay questioned what SEIU was seeking in the report because adverse action had not been taken against any employee, and no grievance had been filed or contract violation alleged. The City maintained its position that the report was confidential, and did not provide it.[19]

On September 11, 2008, the Redding City Manager sent a letter to Arnold expressing disappointment that SEIU Local 1021 had complained to local media that the REU Customer Service Division was a "sweatshop." The letter characterized the investigation as initiated by an employee "struggling with performance problems" who sought justification by "pointing to perceived inequalities in the workplace." As a result of information obtained in the investigation, changes were made on July 22 which responded to Customer Service Division

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[17] Johnson received the letter on August 14. She did not understand the reference to "quid pro quo."

[18] Duvernay asserted that the City's decision to expand the investigation to general Customer Service Representative issues occurred in January 2008, while Arnold's presentation to the Redding City Council was made in March 2008, and the City Council gave no direction to City staff as a result of the union's public comments. Further, the City agreed in negotiations only to postpone the new job class until after contract ratification.

[19] Arnold testified that he did not see the August 20, 2008 letter until the PERB informal settlement conference in March 2009. Johnson received a copy of the letter in the Personnel Office on August 21. Legal Assistant Suzanne Lovett in the City Attorney's Office finalized and sent the letter to Arnold on August 20, and it was not returned.

employee concerns. Despite the union's representation to the media, the City had not promised to share the investigative report with SEIU or the public. The letter noted that no employee had been disciplined. The letter concluded that the union's continued insistence on obtaining the confidential report could force the City to seek relief at PERB.[20]

In September and October 2008, SEIU distributed flyers and leaflets to bargaining unit employees, and posted a flyer on the bulletin board at Redding City Hall publicizing the dispute with the City over the investigative report and Customer Service Division issues.

Arnold testified that SEIU sought the investigative report(s) for several reasons. First the union believed that the City was preparing to fill the new Trainer position because it considered the Customer Service issues resolved, while the Customer Service Representatives had informed union representatives their concerns were not solved. Customer Service Representatives had reported unsafe working conditions and contract violations such as short notice of mandatory overtime;[21] manipulation of workplace statistics; unfair assignment of equipment and computers; sexual harassment and a hostile work environment; and abusive management. SEIU Local 1021 had not filed any grievances in July and August 2008 because it was waiting for the investigation to conclude, any follow-up actions by the City, and

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[20] The City Manager's letter did not mention the August 20, 2008 letter of City Attorney Duvernay. Duvernay's letter was not included or referenced in the City's position statement filed with PERB on September 30. Duvernay testified that his letter was not provided to outside counsel. This was an oversight, given the activity between the filing of the charge at PERB on September 16 and the filing of the City's position statement on September 30, i.e., City receipt of charge, City filing of two notices of appearance, and retention of outside counsel within a two-week period. His testimony is credited.

[21] On August 4, 2008, at 3:00 p.m., a Customer Service Division supervisor sent an electronic mail message (e-mail) to eight Customer Service Representatives, copying the other supervisors and managers, that three employees were needed to work overtime from 5:00 to 6:00 p.m. that day. Evidence was presented about an overtime grievance filed before Hauser became the REU Director which was processed in December 2008 and January 2009, but it is not clear if that grievance was based on the August 4 overtime directive.

Customer Service Representatives did not want to be identified on grievance documents due to fear of retaliation.[22] The union needed the specific Customer Service Representative allegations set forth in the report because all the information it had received was "off the record."[23]

ISSUE

Did the City unlawfully refuse to provide information requested by SEIU Local 1021?

CONCLUSIONS OF LAW

The complaint in this case alleges that the City failed to respond to SEIU Local 1031's August 11, 2008 request for information, i.e., the investigative reports. The evidence established that SEIU requested the report(s) twice, on July 28 and August 11, and the City responded twice to the requests, on August 6 and August 20. It is undisputed, however, that the City did not provide the requested information to the union.

Refusal to Provide Information

It is well established under PERB and National Labor Relations Board (NLRB) case law that an exclusive representative is entitled to information sufficient to enable it to understand and intelligently discharge its duty to represent bargaining unit members. "Relevant and necessary" information must be furnished for representing employees in contract negotiations and for policing the administration of an existing agreement/grievance processing. (*Stockton Unified School District* (1980) PERB Decision No. 143 (*Stockton*); *Chula Vista City School District* (1990) PERB Decision No. 834 (*Chula Vista*); *NLRB v. Acme Industrial Co.* (1967) 385 U.S. 432; *Procter & Gamble Mfg. Co. v. NLRB* (8th Cir. 1979) 603

[22] Arnold knew that City policy and MMBA prohibited retaliation.

[23] The Customer Service Representatives interviewed told union representatives that they had been truthful with the investigator, an independent third party.

F.2d 1310.) Where the requested information is relevant and necessary to effectively administer the agreement, it must be provided even absent a specific grievance filed by a union against the employer. The union has a right to the requested information to evaluate the merits of future claims and whether to pursue a grievance. (*Town of Paradise* (2007) PERB Decision No. 1906-M (*Paradise*).)

Certain information requested by an exclusive representative is presumed to be relevant. The Board has found various types of information relevant when requested for collective bargaining or contract administration. (*Stockton*, *supra*, PERB Decision No. 143—health insurance data; *Trustees of the California State University* (1987) PERB Decision No. 613-H (*CSU Trustees*)—wage survey data; *Newark Unified School District* (1991) PERB Decision No. 864—staffing and enrollment projections; *Mt. San Antonio Community College District* (1982) PERB Decision No. 224—names of employees disciplined for protected activities, and names and home addresses of former employees to determine reinstatement or back pay entitlement; *Modesto City Schools and High School District* (1985) PERB Decision No. 479 (*Modesto*)—rating sheets to evaluate transfer candidates; *California State University, Sacramento* (1982) PERB Decision No. 211-H—employee personnel file for grievance representation; *Azusa Unified School District* (1983) PERB Decision No. 374—employees affected by reduction in work hours; *Oakland Unified School District* (1983) PERB Decision No. 367—seniority lists and subcontracting unit work; *State of California (Department of Veterans Affairs)* (2004) PERB Decision No. 1686-S (*State of California (DVA)*—investigative report into hostile and unsafe work environment; *Compton Community College District* (1990) PERB Decision No. 790 *(Compton CCD)*—part-time employees names and home addresses for agency fee purposes.) Information pertaining to mandatory subjects of bargaining is

presumptively relevant. (*State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S (*State of California*).)

PERB uses a liberal standard, similar to a discovery-type standard, to determine the relevance of the requested information. If the employer questions the relevance of the information, the union must provide an explanation. (*Modesto*, *supra*, PERB Decision No. 479.) If the relevance of the requested information is rebutted by the employer, the exclusive representative must establish how the information is relevant to its representational responsibilities such as negotiations or contract administration. (*CSU Trustees*, *supra*, PERB Decision No. 613-H; *San Diego Newspaper Guild v. NLRB* (9th Cir. 1977) 548 F.2d 863.)

Information request cases ordinarily turn on the particular facts involved, so each request is analyzed separately. (*Chula Vista*, *supra*, PERB Decision No. 834.) Failure to provide requested information is a per se violation of the duty to bargain in good faith.

The fact that an employer ultimately furnishes the information does not excuse an unreasonable delay in supplying it; unreasonable delay in providing requested information is tantamount to a failure to produce the information at all. (*Chula Vista*, *supra*, PERB Decision No. 834.) A delay may be found reasonable when the delay was justified by the circumstances and the union was not prejudiced by the delay. (*City of Burbank* (2008) PERB Decision No. 1988-M, citing *Union Carbide Corp.* (1985) 275 NLRB 197, judicial appeal pending.)

It is well-established that a union's right to relevant and necessary information is not absolute. Constitutional rights of personal privacy may limit otherwise lawful demands for production of information held in confidence. The employer bears the burden of demonstrating that disclosure would compromise privacy rights. In *Detroit Edison Co. v. NLRB* (1979) 440 U.S. 301, 314, the U.S. Supreme Court stated: "A union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to

supply all the information in the manner requested." Thus, the NLRB developed a balancing test to weigh a union's need and interest in obtaining relevant employee information against privacy and confidentiality interests. PERB had adopted the same balancing test to apply to employer claims that employee confidentiality prevails. (*Los Rios Community College District* (1988) PERB Decision No. 670 (*Los Rios CCD*); *Modesto*, *supra*, PERB Decision No. 479.)

The Board has approved the practice of redacting confidential information before providing relevant information to the exclusive representative. (*Chula Vista*, *supra*, PERB Decision No. 834.)

An employer need not comply with a request for information if the request is unduly burdensome. (*State of California*, *supra*, PERB Decision No. 1227-S; *Chula Vista*, *supra*, PERB Decision No. 834; *Stockton*, *supra*, PERB Decision No. 143; *Los Rios CCD*, *supra*, PERB Decision No. 670.) The employer bears the burden of proving this defense.

Information pertaining to non-bargaining unit employees is not presumed relevant, and the exclusive representative bears the burden of demonstrating that the information is relevant and necessary to its representational duties. (*State of California (Department of Consumer Affairs)* (2004) PERB Decision No. 1711-S (*State of California (DCA)*.)

An employer does not breach its duty to provide relevant and necessary information when the employer partially complies with an information request and the union fails to communicate its dissatisfaction, follow up, reassert, or clarify its request. (*City of Fresno* (2006) PERB Decision No. 1841-M; *Klamath-Trinity Joint Unified School District* (2005) PERB Decision No. 1778; *Trustees of the California State University* (2004) PERB Decision No. 1732-H; *State of California (DCA)*, *supra*, PERB Decision No. 1711-S; *Oakland Unified School District*, *supra*, PERB Decision No. 367 (*Oakland*).)

In *San Bernardino City Unified School District* (1998) PERB Decision No. 1270 (*San Bernardino*), PERB held that the employer's failure to provide a witness list requested for a Personnel Commission disciplinary appeal hearing did not violate the Educational Employment Relations Act (EERA). The Board found that the witness list did not relate to a mandatory subject of bargaining or grievance processing, but only to an "extra-contractual forum." The burden was on the exclusive representative to show that the witness list was relevant and necessary to its representational duties, but the union did not meet that burden.[24]

In *Los Angeles Unified School District* (1990) PERB Decision No. 835, the Board stated: "There is no precedent to support the incorporation of *Skelly* (*Skelly v. State Personnel Board* (1975) 15 Cal.3d 194) requirements into the duties required of an employer under the EERA, and we find no basis for adopting such requirements." The case dismissed allegations that the employer did not provide documents for a *Skelly* hearing, but the decision turned on the failure of the employee organization to request the information, citing *Oakland Unified School District* (1982) PERB Decision No. 275. PERB has extended its conclusion that *Skelly* hearings are extra-contractual forums to MMBA jurisdictions. (*Carmichael Recreation & Park District* (2008) PERB Decision No. 1953-M.)

SEIU Local 1021 asserted that its requests for the investigative reports were based on its right and duty to represent its members in workload distribution, working conditions, and uneven discipline, which are mandatory subjects of bargaining; thus, the information it seeks is presumptively relevant and necessary. The City responds that the requested information did not relate to negotiations or grievance processing since bargaining had already produced a

[24] *San Bernardino, supra*, PERB Decision No. 120 did not mention *Los Angeles Unified School District* (1994) PERB Decision No. 1061. That case found the employer did not violate EERA in refusing to provide magazines for use in a Personnel Commission disciplinary appeal hearing. The decision featured three separate written opinions.

tentative agreement, and no grievances had been filed with it. SEIU contended that it was not seeking private, embarrassing and/or confidential information, and it would work with management on redacting truly private material. The employer responds that the information request implicates constitutionally significant privacy rights of third parties, managers and non-unit employees, whom the union does not represent. The employees interviewed have confidentiality rights also protected by the California Public Records Act (CPRA),[25] according to the City.

State of California (DVA), *supra*, PERB Decision No. 1686-S, is highly instructive as it addresses all of these arguments. In *State of California (DVA)*, the Board ordered production of an investigative report prepared by a special investigator concerning allegations of a hostile work environment created by a supervisor as relevant and necessary for the exclusive representative to represent its members in being free from racial discrimination and a hostile work environment, and to work in a safe workplace.

As to presumptive relevance, in *State of California (DVA)*, *supra*, PERB Decision No. 1686-S, PERB rejected the employer's argument that the information was sought for use in an extra-contractual forum.[26] Moreover, *Paradise*, *supra*, PERB Decision No. 1906-M, requires production of requested information relevant and necessary to effectively administer the agreement even absent a specific grievance filed by the union against the employer.

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[25] Government Code sections 6250 et seq.

[26] The contract between the exclusive representative and the State employer contained an anti-discrimination clause, but alleged violations could only be filed as complaints, and could not be grieved or arbitrated.

In *State of California (DVA)*, *supra*, PERB Decision No. 1686-S, PERB also rejected CPRA-based defenses "standing alone" to requests for information.[27] The Board concluded that the investigative report was not a confidential personnel record, and the supervisor whose alleged misconduct was being investigated had no expectation of privacy in the report.[28]

In *State of California (DVA)*, *supra*, PERB Decision No. 1686-S, the proposed decision cited an appellate court and NLRB decision where redacting employee names or identities eliminated privacy problems while providing the basic information sought.[29]

As *State of California (DVA)*, *supra*, PERB Decision No. 1686-S points out, the information requested, an investigative report into allegations of racial discrimination and a hostile work environment, was not sought by the exclusive representative for release to the general public, but for the purpose of representing its bargaining unit members. Here, the investigative reports into general Customer Service Representative issues and Green's harassment complaint were sought by SEIU Local 1021 to represent Customer Service

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[27] The Board cited an earlier case, *Trustees of the California State University* (2004) PERB Decision No. 1591-H.

[28] The Administrative Law Judge (ALJ)'s proposed decision noted that the employer raised the constitutional privacy argument premised on the right of the supervisor to non-disclosure of negative information in personnel records, finding that the report implicated his right to informational privacy. The employer also raised the CPRA-personnel files confidentiality defense. The proposed decision found the subject matter of the investigative report was not one in which the supervisor would have a reasonable expectation of privacy, and the report could be redacted if there were any provisions involving expectations of privacy. The ALJ applied the balancing test, concluding that any interest in confidentiality was outweighed by the interest in disclosure for the purpose of the exclusive representative's right to represent bargaining unit employees. The proposed decision also cited cases arising under the National Labor Relations Act (NLRA) (29 U.S.C. sections 141 et seq.) indicating that unions could be trusted to be discreet in inspecting confidential personnel files.

[29] In *Teamsters Local 856 v. Priceless, LLC* (2001) 112 Cal.App.4th 1500, the court held that employee salaries contained in personnel files could be disclosed as long as employee names were redacted. In *Pennsylvania Power & Light Co.* (1991) 301 NLRB 1104, the NLRB found that the contents of informants' statements, although not their identities, were subject to disclosure.

Representatives as bargaining unit employees and/or union members. The City's attempts to distinguish *Paradise*, *supra*, PERB Decision No. 1906-M, and *State of California (DVA)*, *supra*, are unavailing.[30] The City investigative reports are therefore indistinguishable from the investigative report ordered to be produced in *State of California (DVA)*, *supra*.

The City correctly notes that *State of California (DVA)*, *supra*, PERB Decision No. 1686-S instructs that where defenses related to confidentiality are raised, the facts of the individual case must be examined. Here, as in *State of California (DVA)*, *supra*, the two investigative reports and witness statements gathered during each investigation must be produced and provided to the exclusive representative, subject to redaction/deletion of all employee names and other identifying information in such documents.

REMEDY

Section 3509(b) of the MMBA provides, in pertinent part:

> A complaint alleging any violation of this chapter . . . shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board.

[30] Respondent also cites *City of Los Altos* (2007) PERB Decision No. 1891-M that there is no authority for the speculative proposition than an exclusive representative is entitled to all information that could conceivably aid the union in its representational duties. That case is factually distinguishable, as the charge alleged the City's policy of not releasing disciplinary information without the employee's authorization violated the MMBA on its face, and the union had not requested the information. The City also cites *Ventura County Community College District* (1999) PERB Decision No. 1340 and *State of California*, *supra*, PERB Decision No. 1227-S, in arguing that an exclusive representative is not entitled to the thought process or rationale for the City's decision to implement changes in the Customer Service Division after the investigation reports were completed. SEIU is not seeking such information, but rather the basic facts set forth in the investigation reports.

Section 3541.5(c) gives PERB:

> the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

It has been found that the City violated its obligation to provide information relevant and necessary to SEIU Local 1021's representational responsibilities, namely, the redacted investigative reports concerning Green's harassment complaint and general Customer Service Representative workplace issues and the witness statements accompanying each report. Therefore, the City is ordered to provide these documents, redacted of employee names and any identifying information, to the union.

By this conduct, the City failed to negotiate in good faith with SEIU Local 1021, in violation of MMBA sections 3505 and 3509(b) and PERB Regulation 32603(c). By the same conduct, the City denied SEIU its right to represent bargaining unit employees, in violation of MMBA sections 3503 and 3509(b) and PERB Regulation 32603(b), and interfered with the rights of bargaining unit employees to be represented by the union in violation of MMBA sections 3506 and 3509(b) and PERB Regulation 32603(a). Therefore, it is appropriate to order the City to cease and desist from such conduct.

It is also appropriate that the City be ordered to post a notice incorporating the terms of this remedial order at all locations where notices to bargaining unit employees are customarily posted for employees represented by SEIU Local 1021. Posting such a notice, signed by an authorized agent of the City, will provide employees with notice that the City has acted in an unlawful manner, is being required to cease and desist from such activity, and will comply with the order. It effectuates the purpose of the MMBA that employees be informed of the

resolution of this controversy, and the City's readiness to comply with the ordered remedy. (*Placerville Union School District* (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in the case, it is found that the City of Redding (City) violated the Meyers-Milias-Brown Act (MMBA) when it refused to supply the investigative reports concerning the Dixie Green harassment complaint and general Customer Service Representative workplace issues, and the witness statements accompanying each report, redacted of employee names and other identifying information, to SEIU Local 1021 after its requests therefor. By this conduct, the City failed to negotiate in good faith with SEIU Local 1021 in violation of Government Code sections 3505 and 3509(b) and PERB Regulation 32603(c); denied the right of SEIU to represent bargaining unit employees in violation of sections 3503 and 3509(b) and PERB Regulation 32603(b); and interfered with the rights of bargaining unit employees to be represented by the union in violation of sections 3506 and 3509(b) and PERB Regulation 32603(a).

Pursuant to sections 3509(b) and 3541.5(c) of the Government Code, it hereby is ORDERED that the City and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to negotiate in good faith with SEIU Local 1021 by refusing to provide it with information relevant and necessary to its duties as exclusive representative.

2. Denying SEIU its right to represent bargaining unit employees.

3. Interfering with the rights of bargaining unit employees to be represented by the union.

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

1. Provide copies of the investigative reports concerning the Dixie Green harassment complaint and general Customer Service Representative workplace issues, and witness statements accompanying each report, redacted of employee names and other identifying information, to SEIU Local 1021.

2. Within ten (10) work days of service of a final decision in this matter, post copies of the Notice attached hereto as an Appendix at all work locations where notices to employees represented by SEIU Local 1021 are customarily posted. The Notice must be signed by an authorized agent of the City, indicating that the City will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent 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 SEIU Local 1021.

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 95811-4124
(916) 322-8231
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, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of 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, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 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, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Christine A. Bologna
Administrative Law Judge