

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



OPERATING ENGINEERS, LOCAL 3,

Charging Party,

v.

CITY OF SANTA ROSA,

Respondent.

Case No. SF-CE-768-M

PERB Decision No. 2308-M

March 8, 2013

Appearances: Jolsna M. John, Associate House Counsel, for Operating Engineers, Local 3;  
Caroline L. Fowler, City Attorney, for City of Santa Rosa.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Operating Engineers, Local 3 (Operating Engineers) to the proposed decision (attached) by an administrative law judge (ALJ). The ALJ dismissed the complaint alleging that the City of Santa Rosa (City) violated the Meyers-Milias-Brown Act (MMBA)<sup>1</sup> by demanding negotiations on a successor memorandum of understanding (MOU) two weeks after it had imposed its last, best and final offer (LBFO). The complaint also alleged the City violated the MMBA by threatening to impose a 5 percent wage reduction that was not reasonably comprehended in the City's LBFO.

The Board has reviewed the entire record in this case, including the stipulations that comprise the record below, the ALJ's findings of fact and conclusions of law, the Operating Engineers' exceptions, and the City's response thereto. The ALJ's findings of fact are supported by the record and neither party excepts to those findings. Accordingly, we adopt the

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<sup>1</sup> MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

ALJ's findings of fact as the findings of the Board itself, except as expressly noted below. We also adopt the ALJ's conclusions of law consistent with the discussion below.

### FACTUAL SUMMARY

The parties' MOU expired on June 30, 2009, for the two units represented by the Operating Engineers. Three months earlier, the parties began bargaining for a successor agreement, a process that lasted for nearly a year. Between March 20 and May 25, 2010, the parties participated in impasse procedures, but were not successful in reaching agreement. The City imposed its LBFO on May 25, 2010, a proposal that contained only one term, a two-tiered retirement plan. The City chose to impose only this term, despite the fact that the entire MOU was the subject of negotiation and agreement had not been reached on other subjects.

Two weeks later, on June 7, 2010, the City wrote to the Operating Engineers, noting that the two units represented by the Operating Engineers still lacked a contract and requesting that bargaining begin on new contracts for both units. The Operating Engineers refused to return to the table, claiming it had no obligation to do so because the City had just imposed its LBFO on both bargaining units and the Operating Engineers therefore had no duty to negotiate for one year from that date. The Operating Engineers offered to meet on dates in April, 2011 to initiate negotiations before the City's adoption of its budget for 2011/12. The Operating Engineers explained its view that by implementing only one term and condition of employment, the remaining MOU remained the status quo until the end of fiscal year 2010/11.

Responding to the Operating Engineers' refusal to meet during the Summer of 2010, the City sent a second letter on July 12, 2010, describing its plan to address its declining fiscal situation by reducing employee compensation by five percent, among other things. Attached to this letter was the City manager's Budget Transmittal, which described actions the City had taken to reduce expenses in 2009/10 and steps it intended to take in the 2010/11 fiscal year to

enhance revenues and further reduce expenses. According to this document, the City identified \$2.5 million in wage and benefit savings and \$1.3 million in new revenues the City hoped to realize. It also noted that employees in most bargaining units had agreed to take no wage increases for the 2010/11 fiscal year. The Budget Transmittal also summarized reductions the City had already made in the 2009/10 fiscal year, noting, “we recognized about midway through 2009/10 that we were still going to have a substantial deficit in 2010/11.” Staff eliminations were implemented on April 30, 2010, (shortly before the City imposed the two-tier retirement proposal on the Operating Engineers) “(i.e., before the start of the 2010/11 fiscal year) to realize as much savings as possible.” (Attachment to Jt. Ex. 2, p. 9.)

In the Budget Overview, also transmitted to the Operating Engineers with the Budget Transmittal, the City noted, “By the time of our Fall Financial Update, however, we realized that our revenues were coming in much lower than anticipated”. (Attachment to Jt. Ex. 2, Budget Overview, p. 15.)

After receiving the July 12, 2010 correspondence from the City, Operating Engineers reasserted its position that its duty to bargain did not arise until the following fiscal year. Correspondence between the parties continued in this vein until August 19, 2010, when the City declared impasse. The only proposal the City presented to the Operating Engineers was a five percent wage reduction.

The Operating Engineers filed this unfair practice charge on August 30, 2010, but participated in mediation procedures in late October, 2010. Through mediation the parties reached agreement for a one-year contract for both units, effective July 1, 2010 through June 30, 2011. The City did not impose any wage reduction on the bargaining unit employees represented by the Operating Engineers.

## PROPOSED DECISION

The ALJ rejected the Operating Engineers' argument that Government Code section 3505.4 establishes a "cooling off period" after a unilateral imposition which excuses bargaining for one year after imposition. Instead, he concluded that the legislative intent of the AB 1852, 2000 amendment to the MMBA, was to correct the Court of Appeal decision in *Cathedral City Public Safety Management Assn. v. City of Cathedral City* (1999, Docket No. E022719. Review den. and opn. ordered nonpublished 9/15/99 S080447), in which the court held that an employer could effectively suspend the employee organization's right to negotiation by unilaterally implementing an MOU with a set term after impasse was reached. The amendment to Government Code section 3505.4 overturned that decision by clarifying that unilateral implementation does not impose an MOU, only terms encompassed in the employer's LBFO. The union therefore cannot be deprived of the right each year to meet and confer on matters within the scope of representation.

Finding that the supposed one-year cooling off period would conflict with the obligation to "meet and confer promptly upon request by either party" in Government Code section 3505, the ALJ concluded that the City did not bargain in bad faith by requesting that negotiations convene following implementation of its LBFO. Likewise, the City's presentation of an opening proposal for a five percent reduction in compensation did not constitute bad faith bargaining, according to the ALJ.

## DISCUSSION

The Operating Engineers argues in its exceptions that the ALJ's decision renders the MMBA a nullity because it would promote "perpetual concession bargaining on piecemeal single proposals." However, the Operating Engineers prosecuted this case solely on a theory that AB 1852 requires a one-year cooling off period after an employer imposes its LBFO.

We acknowledge the ample precedent under the National Labor Relations Act explaining why piecemeal bargaining, or any negotiating conduct that “reduces the flexibility of collective bargaining and narrows the range of possible compromises by rigidly and unreasonably fragmenting negotiations” violates the duty to bargain in good faith. (*E. I. Du Pont & Co.* (1991) 304 NLRB 792, 800. See also *Sartorious, Inc.* (1997) 323 NLRB 1275; *Sacramento Union* (1988) 291 NLRB 552, 556; *Winn-Dixie Stores, Inc.* (1979) 243 NLRB 972, 974.)

This case was presented to the ALJ on stipulated facts, rather than live testimony. This abbreviated record does not permit us to consider any of the typical factual scenarios that the above-quoted cases have characterized as improper piecemeal bargaining, e.g. refusing to discuss economic issues until non-economic issues are settled, or unilaterally changing one term while engaged in negotiations on other terms. Nor does it permit us to consider possible employer defenses to alleged piecemeal bargaining. Thus, we do not address the alleged piecemeal bargaining claims in this case.

By its argument that there is a mandated “cooling off” period after imposition of a LBFO, the Operating Engineers seems to be asserting that an imposed LBFO includes an implied zipper clause that is to last for one year. This assertion is completely at odds with the purpose of AB 1852, which was to correct a judicial decision that permitted a multi-year MOU to be imposed, therefore extinguishing the union’s right to bargain during the imposed term. The Legislature recognized that this result confounded the purpose of the MMBA and overturned the decision by passing AB 1852 in 2000.

PERB itself has recognized that unilateral impositions after the completion of impasse procedures do not impose a collective bargaining agreement with a duration clause limiting negotiations for a specified period. (*Rowland Unified School District* (1994) PERB Decision

No. 1053; *State of California (Department of Personnel Administration)* (2010) PERB

Decision No. 2130-S [unilateral implementation of a duration clause would illegally limit the statutory right to bargain; imposition cannot waive or limit the union's right to bargain, should impasse be broken].<sup>2)</sup>

Consequently, we find no basis in our precedent or in legislative history to support the Operating Engineers' view that AB 1852 created an exception to the rule that an imposition does not establish a set duration for imposed terms and conditions of employment. We also agree with the ALJ's conclusion that the legislative history of AB 1852 contains nothing to support the Operating Engineers' claim that there is a one-year hiatus on the union's duty to bargain. The legislative intent was to declare that the employer's post-impasse imposition does not extinguish the right of the employee organization to negotiate prior to the adoption of the agency's annual budget, or "as otherwise required by law." (§ 3505.4.) The amended statute is thus a sword enabling the union to assert bargaining rights after imposition. It is not a shield protecting the union from legitimate demands to bargain from the employer.

#### ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. SF-CE-768-M is DISMISSED.

Chair Martinez and Member Huguenin joined in this Decision.

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<sup>2</sup> Impasse can be broken when concessions in bargaining positions sufficient to revive the possibility of fruitful discussions create changed circumstances that revivify the duty to bargain after imposition. (*Public Employment Relations Bd. v. Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881, 899.)

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



OPERATING ENGINEERS LOCAL 3,

Charging Party,

v.

CITY OF SANTA ROSA,

Respondent.

UNFAIR PRACTICE  
CASE NO. SF-CE-768-M

PROPOSED DECISION  
(4/16/2012)

Appearances: Jolsna M. John, Associate House Counsel, for Operating Engineers Local 3;  
Caroline L. Fowler, City Attorney, for City of Santa Rosa.

Before Shawn P. Cloughesy, Chief Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges a public employer breached its duty to bargain in good faith in violation of the Meyers-Milias-Brown Act (MMBA)<sup>1</sup> when it requested that the union resume negotiations for a successor contract two weeks after implementing its last, best and final offer (LBFO). The employer denies any violation of the MMBA.

On August 30, 2010, the Charging Party, Operating Engineers Local 3 (Local 3), filed with the Public Employment Relations Board (PERB or Board) an unfair practice charge against the City of Santa Rosa (City) and a request for injunctive relief. The City responded to the charge and injunctive relief request on September 2, 2010. Local 3 filed a reply on September 3, 2010. The Board denied Local 3's request for injunctive relief on September 7, 2010.

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<sup>1</sup> The MMBA is codified at Government Code section 3500 et seq. Hereafter all statutory references are to the Government Code unless otherwise noted.

On May 3, 2011, the PERB Office of the General Counsel issued a complaint that alleged the City violated its duty to bargain in good faith when it requested that Local 3 meet and confer regarding a successor contract two weeks after implementing its LBFO. The complaint also alleged the City breached its duty to participate in impasse procedures or, in the alternative, failed to bargain in good faith when the City continued to demand to bargain and threatened to impose a five-percent wage reduction when the wage reduction was not reasonably comprehended in the LBFO that was previously imposed. By the above conduct, the City is alleged to have violated MMBA sections 3503, 3505, 3505.4,<sup>2</sup> 3506, 3509(b) and PERB Regulation 32603(a), (b), (c) and (e).<sup>3</sup>

The City answered the complaint on May 20, 2011, denying the substantive allegations and asserting affirmative defenses.

The parties participated in a settlement conference conducted by a Board agent on June 30, 2011, but the matter was not resolved.

In lieu of a formal hearing, the parties submitted a stipulation of facts and exhibits. The parties submitted briefs on January 17, 2012. On March 26, 2012, the matter was reassigned to the undersigned as the previous Administrative Law Judge (ALJ) discovered she may have participated in the review of the injunctive relief request. Neither party objected to the reassignment.

On March 30, 2012, the undersigned ALJ proposed to take official notice of Assembly Bill (AB) 1852 and its legislative analyses which eventually led to the enactment of MMBA section 3505.4. The interpretation of MMBA section 3505.4 is at the center of the dispute. By

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<sup>2</sup> MMBA section 3505.4 was subsequently amended by AB 646, Ch. 680/Stats. 2011. The relevant provisions referenced in this case were added to section 3505.7 effective January 1, 2012.

<sup>3</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

April 6, 2012, neither party objected to the request for official notice and submitted brief arguments in support of its interpretation of MMBA section 3505.4. Official notice is therefore taken of AB 1852 and its legislative history. The matter was submitted for proposed decision as of April 6, 2012.

### FINDINGS OF FACT

#### Jurisdiction

Local 3 is a “recognized employee organization” within the meaning of MMBA section 3501(b) and an “exclusive representative” within the meaning of PERB Regulation 32016(b), of the City’s employees in Unit 3 – Maintenance, and Unit 16 – Utilities Systems Operators. The City is a public agency within the meaning of MMBA section 3501(c) and PERB Regulation 32016(a).

#### Background

Christine Sliz (Sliz) is the City’s Employee Relations Manager. Don Dietrich (Dietrich) is the Local 3 Director of Public Employees Division.

Local 3 and the City are parties to a Memorandum of Understanding (MOU) that expired June 30, 2009. In April 2009, Local 3 and the City initiated negotiations for a successor agreement. The parties eventually participated in pre-impasse and post-impasse procedures from March 20, 2010 through May 25, 2010. On May 25, 2010, the City Council voted to impose its LBFO. The LBFO contained only one proposal, a two-tiered retirement plan.<sup>4</sup>

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<sup>4</sup> An allegation of bad faith bargaining regarding the implementation of the LBFO was the subject of two other unfair practice charges filed by Local 3 (SF-CE-742-M and SF-CE-743-M). The proposed decision issued in those consolidated cases did not find bad faith bargaining.

City's Request to Return to the Bargaining Table after Implementation of its LBFO

In a letter to Dietrich dated June 7, 2010, Sliz noted that Units 3 and 16 remained without a contract. Sliz requested that Local 3 return to the bargaining table to negotiate contracts for both bargaining units.

On June 9, 2010, Dietrich responded to the request to convene negotiations. Dietrich mentioned the recent implementation of the City's LBFO and quoted MMBA section 3505.4,<sup>5</sup> suggesting Local 3 did not have an obligation to meet and confer again for one year. Dietrich offered the date of April 19, 2011, more than 10 months later, to initiate negotiations prior to the adoption of the City's 2011/12 annual budget.

On June 17, 2010, Sliz sought clarification from Dietrich on the basis for Local 3's refusal to meet and confer. Sliz reminded Dietrich that the recent implementation of the LBFO followed the conclusion of negotiations for 2009/10. Sliz's letter continued:

As you know, the City's financial situation continues to decline. The Council recently approved a budget for FY10-11 that has a gap of approximately \$3.8M. The City's strategy to fill in the gap involves a combination of revenue enhancements (approximately \$1.3M) and employee concessions/reductions

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<sup>5</sup> During the relevant period, MMBA section 3505.4 stated:

If after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding. *The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.*

(Emphasis added.)

(approximately \$2.5M). The Council directed staff to obtain a 5% concession from each bargaining unit.

The City's opening proposal to [Local 3] is for a 5% salary reduction. A 5% salary reduction from each of the City's bargaining units will mitigate but may not completely eliminate the need for additional staff reductions. The 5% salary reduction from Unit 3 and 16 employees plays a critical role in balancing the budget this year.

Local 3 and the City continued to exchange correspondence about the obligation to bargain. Local 3 asserted it was not refusing to bargain but, rather it did not have an obligation to bargain again until April 2011, prior to the adoption of the City's 2011/12 budget. The City, in turn, reminded Local 3 of the "mutual obligation personally to meet and confer promptly upon request by either party," pursuant to the MMBA. (MMBA sec. 3505.)

Finally, on August 19, 2010, Sliz notified Dietrich the City was declaring impasse, stating:

In spite of the City's good faith efforts to bring [Local 3] back to the negotiating table promptly, [Local 3] has chosen to refuse to meet and confer promptly upon the City's request as required by the MMBA. The City is declaring impasse with [Local 3]. Please contact me by August 25, 2010 to discuss mediation. If [Local 3] refuses to mediate, the City will consider the unit as waiving the right to bargain and will take action to impose the salary reduction outlined in the opening proposal.

On August 30, 2010, Local 3 filed the present unfair practice charge and requested that PERB seek a restraining order against the City. The Board denied the request on September 7, 2010.

Beginning on September 9, 2010, the City and Local 3 exchanged email to schedule mediation. The parties participated in mediation on October 25 and 27, 2010, and reached agreement on a contract covering the period July 1, 2010 through June 30, 2011. On November 16, 2010, the City Council adopted separate MOUs for Unit 3 and Unit 16.

#### Legislative History of MMBA 3505.4

On September 7, 2000, AB 1852, which added MMBA section 3505.4, was chaptered.

The Legislative Counsel's Digest for the chaptered legislation provided:

The bill would provide that the unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of its right each year to meet and confer on matters within the scope of representation prior to the public agency adopting its budget or as otherwise required by law.

(Emphasis added.)

The Senate Floor analyses regarding the proposed language which was chaptered, stated in part:

According to the sponsors, "Last year, the Fourth Appellate Court issued an unprecedented and controversial decision in [*Cathedral City*<sup>6</sup>] that could radically change the balance of power in the bargaining process. This lawsuit was a result of an impasse between the City of Cathedral and the local police association.

"The City of Cathedral began negotiating a new memorandum of understanding (MOU) with the police association in December 1995. No agreement was reached after nine months of negotiations. Pursuant to city rules, they followed the procedures for the resolution of impasse and began mediation in August 1996. Again, no agreement was reached. From August 1996 through May 1997, the city and the police association communicated sporadically about the employment issues and about procedures for resolving the impasse. On August 13, 2007, the city council voted 5-0 to impose the city's last and best final offer. The action that specifically led to litigation was the city's decision to unilaterally impose a multi-year MOU over the objections of the police association. The specific employment terms of the MOU were effective July 1, 1997 through December 31, 1999 – two and a half years.

"The Fourth Appellate Court upheld this highly unprecedented and controversial action of the City of Cathedral. Under the Court's decision, a public employer could effectively extinguish

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<sup>6</sup> *Cathedral City Public Safety Management Association v. City of Cathedral City (Cathedral City)*. The California Supreme Court denied review and directed that the decision not be published. (1999 Cal.LEXIS 6387.)

the employees' statutory right to bargain collectively by imposing long[-]term agreements of five or ten years upon impasse. At the urging of several public employee labor organizations, the Supreme Court reviewed the Appellate Court decision and directed the Reporter of Decisions not to publish the decision. Nonetheless, the opinion stands as a glaring contradiction to past practices in local government labor relations and establishes a precedent for other local agency employers to emulate the Cathedral city council."

### ISSUES

1. Did the City breach its duty to bargain in good faith when it requested that Local 3 meet and confer regarding a successor contract two weeks after implementing its LBFO?
2. Did the City breach its duty to bargain in good faith or participate in impasse procedures by continuing to demand to bargain and threatening a five-percent wage reduction when the wage reduction was not reasonably comprehended in the LBFO that was imposed on May 25, 2010?

### CONCLUSIONS OF LAW

MMBA section 3505 sets forth the parties' bargaining obligations, stating in part:

"Meet and confer in good faith" means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, *shall have the mutual obligation personally to meet and confer promptly upon request by either party* and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. . . .

(Emphasis added.)

During the relevant period, MMBA section 3505.4 stated:

If after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to

interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding. *The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.*

(Emphasis added.)

The complaint alleges the City violated MMBA sections 3505 and 3505.4, and PERB Regulation 32603(c) by engaging in bad faith bargaining. Bargaining in good faith is a “subjective attitude and requires a genuine desire to reach agreement.” (*Placentia Fire Fighters v. City of Placentia* (1976) 57 Cal.App.3d 9, 25.)

Local 3 contends the City breached its duty to bargain in good faith when it requested that Local 3 return to the bargaining table to negotiate MOU's for Units 3 and 16 two weeks after implementing its LBFO. Local 3 asserts the City's demand to convene negotiations violates the one-year “cooling off” period implied by MMBA section 3505.4. Local 3 does not cite any authority for its assertion that MMBA section 3505.4 establishes a one-year cooling off period exists following implementation of a LBFO, other than to assert that MMBA section 3505.4 only gave the right to demand to bargain each year to employee organizations. Local 3 argues the City could have included the five-percent wage reduction in the LBFO implemented on May 25, 2010, but chose not to do so.

The City contends Local 3's claim of a mandatory cooling off period is not supported by any statutory or legal authority under the MMBA and that AB 1852 was legislatively driven to solve a problem created by the *Cathedral City* case. The City asserts there is nothing in the City's Employer-Employee Regulations or the MMBA that precluded the City from asking Local 3 to convene negotiations when there was no contract in effect between the parties.

Only after Local 3 repeatedly refused to bargain was the City forced to declare impasse and offer to participate in mediation. The City emphasizes that the parties reached agreement through mediation on new MOU's and a wage reduction was never imposed on Local 3.

The basic rule of statutory interpretation is that the intent of the legislative body is to be given effect. (*Long Beach Police Officers Assn. v. City of Long Beach* (1988) 46 Cal.3d 736.) Ascertaining legislative intent begins with examination of the words of the statute. (*Ibid.*) If necessary to resolve ambiguity, reference may be made to the statute's legislative history and statutory context. (*Ibid.*)

A review of MMBA section 3505.4 provides that after exhaustion of any applicable impasse procedures a public agency may implement its LBFO, but not a MOU. The implementation of a LBFO "shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation." (MMBA sec. 3505.4.) Nothing in this provision demonstrates the Legislature established a one-year cooling off period following implementation of a LBFO. In fact, such a provision would appear to conflict with the obligation to "meet and confer promptly upon request by either party" in MMBA section 3505. In *Dublin Professional Fire Fighters, Local 1885, AFL-CIO v. Valley Community Services District* (1975) 45 Cal.App.3d 116, 118, the court construed Section 3505, stating, "the obligation, in proper cases, to 'meet and confer promptly upon request' is absolute." The court further held that a public agency's budget cycle did not control the timing of negotiations, holding that a request to bargain "may be made at any time by either side." (*Id.* at p. 118.) Thus, the statutory obligation to meet "promptly upon request" applies equally to both parties and is not limited by a public agency's budget cycle.

Furthermore, Local 3's contention is refuted by the legislative history for Section 3505.4. In adopting AB 1852, the Legislature was responding to the *Cathedral City*

decision which upheld a city's decision to implement a LBFO comprised of a three-year MOU. The city's implementation of the MOU deprived the union of the opportunity to bargain for the three-year period.

The Senate Floor Analysis for AB 1852 explains the Legislature was seeking to reverse the decision of the court and prohibit a public agency from unilaterally implementing a MOU that would impede a union's right to bargain for an extended period. There is no reference in the legislative history to a cooling off period which bars a public agency from requesting negotiations.

Accordingly, the City's conduct, requesting Local 3 to convene negotiations following implementation of a LBFO, does not demonstrate bad faith bargaining; nor does the City's continued demand to bargain or the presentation of its opening proposal for a five percent wage reduction.

#### PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. SF-CE-768-M, *Operating Engineers Local 3 v. City of Santa Rosa*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 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, subdivision (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).)

Shawn P. Cloughesy  
Chief Administrative Law Judge