

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MILPITAS EMPLOYEES ASSOCIATION,

Charging Party,

v.

CITY OF MILPITAS,

Respondent.

Case No. SF-CE-956-M

PERB Decision No. 2412-M

February 19, 2015

Appearances: Clisham & Sortor by David P. Clisham, Attorney, for Milpitas Employees Association; Renne, Sloan, Holtzman & Sakai by Charles D. Sakai and Erich W. Shiners, Attorneys, for City of Milpitas.

Before Huguenin, Winslow and Banks, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Milpitas Employees Association (MEA) and a cross exception filed by the City of Milpitas (City) to a proposed decision issued on August 30, 2013, by an administrative law judge (ALJ) pursuant the Meyers-Miliias-Brown Act (MMBA).¹ The complaint issued by PERB's Office of the General Counsel in Case No. SF-CE-956-M, alleged that the City violated the duty to meet and confer in good faith by changing unilaterally Section 5.01 of the parties' memorandum of agreement, as well as City Resolution 5981, Section IV, in conjunction with a decision to contract out services.² At the consolidated hearing, the complaints in both cases were amended to include the issue of whether the City

¹ The MMBA is codified at Government Code section 3500 et seq.

² Case No. SF-CE-958-M, filed contemporaneously by the Milpitas Supervisors' Association, alleged the same essential facts and was consolidated for processing.

failed to meet and confer over its decision to outsource bargaining unit work and thereby violated the MMBA.

In her proposed decision, the ALJ concluded that the City had a duty to meet and confer, that the City failed to provide reasonable notice of the decision to outsource bargaining unit work, but that both by agreement and by inaction, the two unions had waived the right to meet and confer. On that basis, the ALJ proposed to dismiss both cases. The unions filed exceptions, and the City filed a cross-exception to the ALJ's conclusion that the City failed to provide reasonable notice. Following briefing on December 6, 2013, the cases were placed on the Board's docket.

On February 6, 2015, attorneys for MEA requested that PERB "dismiss the charge and complaint issued in . . . Case No. SF-CE-956-M." The request conveyed, and was based upon, an agreement between United Public Employees of California (UPEC), Laborers' International Union of North America, Local 792 on behalf of MEA and the City, providing for settlement of the dispute in Case No. SF-CE-956-M. The "Agreement" provides, in part:

1. In exchange for the consideration contained in the parties' February 4, 2015-June 30, 2016 Memorandum of Understanding (MOU), UPEC will withdraw will prejudice the exceptions and underlying unfair practice charge in PERB Case No. SF-CE-956-M within five (5) days after the City Council adopts the MOU.

We understand the request, consented to by both MEA and the City, is made in regard to Case No. SF-CE-956-M only, and is for withdrawal of MEA's exceptions and its underlying unfair practice charge, with prejudice, and for dismissal of PERB's complaint in Case No. SF-CE-956-M as amended.

The Board has the discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (PERB Reg. 32320(a)(2)³ [“The Board itself may . . . take such other action as it considers proper.”]; *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S; *Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380; *Oakland Unified School District* (1988) PERB Order No. Ad-171a; *ABC Unified School District* (1991) PERB Decision No. 831b.)

Here, both parties in Case No. SF-CE-956-M agree to the disposition described above. The Board has a longstanding policy favoring the voluntary settlement of disputes. (*Dry Creek Joint Elementary School District* (1980) PERB Order No. Ad-81.) Based on the Board’s review of MEA’s request pursuant to the parties’ settlement agreement, and the entire record in this matter, the Board finds the request to be in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations.

ORDER

The request of the Milpitas Employees Association (MEA) in Case No. SF-CE-956-M is hereby GRANTED. MEA’s exceptions to the proposed decision are deemed withdrawn. MEA’s unfair practice charge is DISMISSED WITH PREJUDICE. The complaint is dismissed and the proposed decision is hereby VACATED in regard to Case No. SF-CE-956-M.

Members Winslow and Banks joined in this Decision.

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