

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,

Charging Party,

v.

COUNTY OF KERN,

Respondent.

Case No. LA-CE-818-M

PERB Decision No. 2430-M

June 10, 2015

Appearances: Weinberg, Roger & Rosenfeld by Sean D. Graham, Attorney, for Service Employees International Union, Local 521; Liebert Cassidy Whitmore by Adrianna E. Guzman, Attorney, and Office of the County Counsel by James L. Brannen, Deputy County Counsel, for County of Kern.

Before Huguenin, Winslow and Banks, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Service Employees International Union, Local 521 (Local 521) to a proposed decision by a PERB administrative law judge (ALJ). The complaint alleged that the County of Kern (County) subcontracted the work of maintenance and groundskeeping employees, who are exclusively represented by Local 521, without fulfilling its bargaining obligations under the Meyers-Milias-Brown Act (MMBA),¹ PERB regulations,² and provisions of the County's Employer-Employee Relations Resolution (local rules) requiring that employee organizations have notice and the opportunity to meet and confer before the County's governing body adopts proposals affecting matters within the scope of

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

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

representation. The proposed decision also granted Local 521's motion, made at the hearing, to amend the complaint to allege that the County further violated its duty to bargain by failing to provide an adequate and timely response to Local 521's request for information concerning the County's subcontracting agreements.

Following a two-day hearing on October 17 and 18, 2013, and the submission of post-hearing briefs on January 13, 2014, the ALJ issued the proposed decision on January 30, 2015. The ALJ concluded that the County violated its duty to bargain in good faith under the MMBA and PERB regulations when it failed to make a timely and complete response to Local 521's request for information, presented resolutions for approval to its governing body that affected negotiable subjects without affording Local 521 notice and opportunity to bargain, and unilaterally entered into subcontracting agreements in September 2012 to perform maintenance and groundskeeping work in various locations throughout the County. The ALJ also concluded that the failure to provide notice and opportunity to bargain to Local 521 violated the County's own local rules and was therefore also an unfair practice under the MMBA and PERB regulations. However, the ALJ dismissed for lack of evidence the allegations in the complaint that the County had unlawfully entered into a subcontracting agreement in December 2011.

As a remedy for the failure and refusal to provide information, the ALJ ordered the County to cease and desist from failing and refusing to provide necessary and relevant information upon request and to post physical and electronic notice to employees of its unlawful conduct. With respect to the unlawful subcontracting decisions, the ALJ ordered the County to cease and desist failing and refusing to bargain with Local 521 over negotiable subjects, to rescind its service agreements with private contractors, effective immediately upon service of a final decision in this matter, and to post physical and electronic notice to

employees of the County's unlawful conduct. The proposed order included no bargaining order or order for reinstatement, back pay or other make whole relief for bargaining unit employees, as there was no evidence in the record of layoffs, reduced hours, or monetary loss suffered by bargaining unit employees.

On March 6, 2015, Local 521 filed with the Board a statement of exceptions to the proposed decision and supporting brief. On March 31, 2015, the County filed its response to Local 521's exceptions. The County filed no exception or cross-exceptions. On May 18, 2015, while its exceptions were pending before the Board, Local 521 requested that it be permitted to withdraw its exceptions and that the proposed decision be made final.

Under its broad powers to "investigate unfair practice charges or alleged violations of [the MMBA], and [to] take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of [the MMBA]," and to "take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of [the MMBA]," the Board has discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (MMBA, § 3509, subd. (a); EERA,³ § 3541.3, subds. (i) and (n); *State of California (Department of Personnel Administration) (2010) PERB Decision No. 2152-S, p. 5.*) When an appeal or exceptions pending before the Board involves a matter of continuing public interest and a precedential ruling on the matter will be instructive to all parties similarly situated, the Board has exercised its discretion by denying a request for withdrawal, in the interest of justice. (*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.*)

³ The Educational Employment Relations Act (EERA) is codified at section 3540 et seq.

Based on the Board's review of Local 521's request for withdrawal and the entire record in this matter, the Board finds withdrawal of Local 521's exceptions to the proposed decision to be in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations. While the allegations included in the complaint and addressed by the proposed decision certainly raise significant issues with a continuing public interest, as noted in the proposed decision, the law regarding a public agency's duty to bargain under the MMBA and PERB regulations is well-settled by judicial and PERB decisional law and it is therefore unnecessary for the Board to issue a precedential decision in this case. Accordingly, the Board grants Local 521's request to withdraw with prejudice its exceptions and the proposed decision shall be final and binding as to the parties but not precedential. (PERB Reg. 32215; *County of Fresno* (2014) PERB Decision No. 2352-M, pp. 3-5.)

ORDER

The request by Service Employees International Union, Local 521 to withdraw with prejudice its exceptions to the proposed decision in unfair practice Case No. LA-CE-818-M is hereby GRANTED and the proposed decision and order shall be final and binding on the parties to this case only.

Members Huguenin and Winslow joined in this decision.