

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRESNO COUNTY PROSECUTORS
ASSOCIATION,

Charging Party,

v.

COUNTY OF FRESNO,

Respondent.

Case No. SA-CE-776-M

PERB Decision No. 2436-M

June 22, 2015

Appearances: Wylie, McBride, Platten & Renner by Christopher E. Platten, Attorney, for Fresno County Prosecutors Association; Liebert, Cassidy & Whitmore by Che I. Johnson, Attorney, for County of Fresno.

Before Huguenin, Banks and Gregersen, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Fresno (County) to a proposed decision issued on May 21, 2014, by an administrative law judge (ALJ) pursuant the Meyers-Milias-Brown Act (MMBA).¹ The complaint issued by PERB's Office of the General Counsel on February 10, 2012, alleged that the County violated MMBA sections 3503, 3505 and 3506, and PERB Regulation 32603(a), (b) and (c)² for failing to meet and confer in good faith with the Fresno County Prosecutors Association (Association) by: (1) demanding to begin negotiations for a successor memorandum of understanding (MOU) eight months before the expiration of the current MOU; (2) rejecting the Association's ratified proposal without explanation; (3) refusing to submit the Association's ratified proposal to the County Board of Supervisors

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

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

for consideration; (4) conducting negotiations by email without consent from the Association; (5) declaring impasse prematurely; and (6) implementing its last, best and final offer (LBFO) without a face-to-face meeting.

In his proposed decision, the ALJ concluded that the County engaged in surface and per se bad faith bargaining in violation of its duty to meet and confer under the MMBA. On July 15, 2014, the County filed exceptions to the ALJ's proposed decision. On August 25, 2014, the Association filed its response. On August 26, 2014, the parties were notified that the filings were complete and the matter was placed on the Board's docket.

On May 12, 2015, the County notified the Board that the parties had resolved the underlying dispute in Case No. SA-CE-776-M and withdrew its exceptions. On May 20, 2015, the Association also notified PERB that the parties had resolved the underlying dispute, withdrew its charge and requested that PERB dismiss the complaint.

The withdrawal and request conveyed by the parties was based upon an agreement between the Association and the County providing for settlement of the dispute. On May 5, 2015, the Fresno County Board of Supervisors (County Board) approved the parties' settlement agreement through Agenda Item Number 43. In relevant part, Agenda Item Number 43 states:

As it pertains to the Unfair Labor Practice Charge filed by the Association against the County, and contingent upon the approval by the Fresno County Board of Supervisors of the settlement agreement and the successor corresponding Memorandum of Understanding effective May 11, 2015, through July 2, 2017, the parties agree to execute the following actions after the Board of Supervisor's approval:

1. Within one (1) week of Board of Supervisor's approval, the County of Fresno agrees to withdraw, with prejudice, the statement of exceptions to the administrative law judge's proposed decision dated May 21, 2014, and filed on July 14, 2014, as it pertains to

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2. Within one (1) week of Board of Supervisor's approval, the Fresno County Prosecutors Association agrees to withdraw, with prejudice, its Unfair Labor Practice Charge (Case No. SA-CE-776-M) and request that PERB dismiss the complaint and vacate the proposed decision against the County of Fresno in that case.

Both parties submitted County Board Agenda Item 43 in their requests. We therefore deem that the County Board Item accurately reflects the agreement reached by the parties.

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) ["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. SA-CE-776-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 the parties' requests pursuant to the parties' settlement agreement, County Board Agenda Item 43 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 joint request in Case No. SA-CE-776-M by the County of Fresno (County) and the Fresno County Prosecutors Association (Association) is hereby GRANTED. The County's exceptions to the proposed decision are deemed withdrawn. The Association's unfair practice charge is withdrawn with prejudice. The complaint is DISMISSED and the proposed decision is hereby VACATED.

Members Banks and Gregersen joined in this Decision.