STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521, Charging Party, v. COUNTY OF TULARE, Respondent.	Case No. SA-CE-782-M PERB Decision No. 2461-M October 30, 2015

Appearances: Weinberg, Roger & Rosenfeld by Kerianne R. Steele, Attorney, for Service Employees International Union, Local 521; Renne, Sloan, Holtzman & Sakai by Charles D. Sakai and Erich W. Shiners, Attorneys, for County of Tulare.

Before Huguenin, Winslow and Gregersen, Members.

DECISION

WINSLOW, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions by Service Employees International Union, Local 521 (SEIU) to a proposed decision (attached) by an administrative law judge (ALJ). The complaint alleged that the County of Tulare (County) violated the Meyers-Milias-Brown Act (MMBA)[1] by failing to bargain in good faith by insisting upon its initial bargaining proposal throughout negotiations, improperly concluding the parties were at impasse, and re-imposing the terms of the County's July 26, 2011, last, best and final offer (LBFO), rather than imposing the County's November 16, 2011, LBFO made in the changed circumstances negotiations. This conduct is alleged to have violated MMBA sections 3503, 3505, 3506, and 3506.5(a), (b), and

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

(c); and constitute an unfair practice under MMBA section 3509(b) and PERB Regulation 32603(a), (b), and (c).[2]

The Board itself has reviewed the administrative record in its entirety and considered SEIU's exceptions and the County's response thereto. The record as a whole supports the findings of fact, and the proposed decision is well-reasoned and consistent with applicable law. Accordingly, the Board hereby adopts the proposed decision as the decision of the Board itself, subject to the following discussion of SEIU's exceptions.[3]

PROPOSED DECISION

The attached proposed decision is thorough in its coverage of the procedural history of this case, the factual background of the parties' various disputes, the issues raised by the unfair practice complaints, and the legal analysis supporting the outcome reached. Therefore, the substance of the proposed decision is not repeated here, except as necessary to provide context for our discussion of SEIU's exceptions.

In their 2009-2011 memorandum of understanding (MOU), the parties had agreed to freeze merit step increases and promotions in flexibly allocated classifications for the term of the MOU. In addition, employees were furloughed 40 hours per year, which represented a wage reduction of 1.92 percent.

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

[3] SEIU also requests to present oral argument concerning the ALJ's application of *City of Clovis* (2009) PERB Decision No. 2074-M (*Clovis*). The Board has historically denied oral argument when an adequate record has been prepared, the parties have had ample opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear to make oral argument unnecessary. (*Antelope Valley Health Care District* (2006) PERB Decision No. 1816-M; *City of Modesto* (2008) PERB Decision No. 1994-M.) This is the case here. We, therefore, deny the request for oral argument, as it is unnecessary in this case.

In 2011,[4] the parties attempted to negotiate a successor MOU, but were unable to reach agreement. The County imposed its LBFO effective August 1, including a continuation of the freeze on merit increases and flex promotions, and an extension of the furloughs.[5]

The County discovered in August that its general fund balance at the end of fiscal year 2010-2011 was $3.5 million greater than anticipated. On August 24, it requested to meet and confer with SEIU due to the "changed circumstances."

Negotiations between the County and SEIU began on September 9. SEIU Chief Elected Officer Kristina Sermersheim (Sermersheim) served as SEIU's chief spokesperson, and Shelline Bennett (Bennett) was the County's chief spokesperson. The County proposed to suspend furloughs for one year, restore the 1.92 percent wage reduction, and maintain all other terms and conditions of employment. Bennett explained that the $3.5 million (of which $1.8 million represented SEIU bargaining units' share) was one-time money. The County expressed to SEIU at the bargaining table that it believed that suspending furloughs was the most equitable way to give one-time money to employees as soon as possible. Bennett advised SEIU that all other bargaining units except one had reached agreement on suspending the furloughs.[6]

After the County presented its furlough suspension proposal and explanation for it, SEIU responded that it wanted to resume negotiations for a new MOU due to the changed circumstances. The County did not object, but Bennett made clear that it could not agree to

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[4] Hereafter, all dates refer to 2011, unless otherwise stated.

[5] The rights and duties of the parties with respect to the freeze on merit increases and flex promotions is the subject of *County of Tulare* (2015) PERB Decision No. 2414-M, which is currently subject to a writ of review in the California Court of Appeal.

[6] Employees in the units represented by the Tulare County deputy sheriff's association were not furloughed, but reached agreement to restore vacation accrual rates and the uniform allowance. Firefighters were also excluded from furloughs.

economic terms that would result in ongoing expenses. SEIU made it equally clear, however, that it was not interested in the suspension of furloughs, but wanted merit step increases restored. The County responded that it could not afford an increase in ongoing expenses such as merit step increases.

The parties extensively reviewed financial information and discussed the costs of merit increases and flex promotions. While Sermersheim understood the distinction between the one-time money and ongoing expenses, she believed it was necessary to restore merit increases to reach agreement on a new MOU.

The County was open to other ways to utilize the one-time funds, and had done so in negotiations with at least two other bargaining units. While SEIU mentioned health insurance benefits at the table, it never submitted a proposal addressing this subject. Nor did SEIU propose any other use of the additional funds that would not result in ongoing costs. It seemed adamant that the merit increases should be unfrozen, if only on a one-time basis. The County provided financial information concerning the costs of unfreezing the merit increases. At one point, SEIU proposed to maintain the furloughs, but restore the merit increases and flex promotions, with a retroactive wage increase to August 1.

The County continued to take a firm position that the $1.8 million was one-time money, and it could not afford ongoing expenses. It explained to SEIU that unfreezing the merit and flex increases would create an ongoing expense, even if the increases were "re-frozen" after paying employees on a one-time basis. The County did not, however, insist that the only method to allocate the funds to employees was by suspending the furloughs. Yet, SEIU never submitted a proposal for use of the one-time funds that addressed the County's insistence that whatever the funds were spent on could not incur continued expense into subsequent budget years.

On November 16, at the conclusion of the fifth bargaining session, the County presented its LBFO containing the suspension of the furloughs and restoration of the 1.9 percent wage reduction, and maintaining the other terms and conditions set forth in the unilateral action taken on July 26. The County requested a response by December 5. This request was reiterated on November 21, in an e-mail from Bennett to Sermersheim, which also included a copy of the LBFO.

SEIU did not respond to the County's request, deciding to let the County impose the furlough suspension and restore the associated wage increase. However, the County did not impose its LBFO. On December 7, when SEIU asked a member of the County's bargaining team, Eric Martin (Martin) when the Board of Supervisors intended to vote to impose the LBFO, the County's Human Resources Director, Jeffrey Cardell (Cardell), interpreted the inquiry to mean that SEIU rejected the LBFO and that SEIU believed the parties were therefore at impasse.

On December 9, Martin sent SEIU Internal Worksite Organizer, Jason Thompson (Thompson) a copy of the agenda items before the County Board of Supervisors meeting for December 13. The pertinent agenda item reads, in relevant part:

> We understand from this message [SEIU's inquiry about when the furlough suspension would be imposed] that SEIU does not accept the County offer and that the parties are again at an impasse.
>
> Therefore, it is recommended that the Board . . . maintain the status quo regarding the terms and conditions of employment with SEIU.

(Jt. Exh. 16.)

On December 13, the County Board of Supervisors voted to make no change in the terms and conditions of employment for SEIU-represented employees and to maintain the current status quo. Cardell testified in the administrative hearing that the County did not

implement its LBFO, because SEIU had said it was not interested in suspending the furloughs and had not agreed to the proposal.

In her proposed decision, the ALJ considered a single issue: Did the County engage in surface bargaining in violation of the duty to bargain in good faith? She considered three distinct aspects of the surface bargaining allegations and concluded the County had not engaged in such conduct.

First, the ALJ concluded that the County was engaged in hard bargaining, because it consistently maintained that it would not agree to economic terms that involved ongoing expenses, and it explained this reason to SEIU in negotiations. The County was open to other proposals to use the one-time funds other than the furlough suspension, but SEIU never presented a proposal that would use only one-time funds. Thus, SEIU failed to establish that the County unlawfully insisted on its initial position by taking a "take-it-or-leave-it" attitude, according to the ALJ.

Second, the ALJ concluded that the County did not improperly or prematurely declare impasse. The County did not set an arbitrary deadline when it asked for SEIU's response to its LBFO. Nor did the County insist that negotiations conclude by a certain time, and it took no action when SEIU did not respond by the requested date.

Further, according to the ALJ, SEIU did not communicate to the County at any point that it had any movement to make or new proposals to offer. The ALJ found no evidence that SEIU continued to display flexibility or a willingness to compromise. Rather, according to the ALJ, SEIU's conduct demonstrated that it believed further discussions would be futile.

Once SEIU asked when the County planned to implement the furlough suspension, the County communicated its belief that the parties were at impasse by sending Thompson a County Board of Supervisors agenda item which expressly stated that an impasse existed. The

ALJ concluded that an agenda item may suffice to provide notice if it is delivered to a proper official and is presented in a manner reasonably calculated to draw attention.

The ALJ also rejected SEIU's contention that the ground rules required communications only between Sermersheim and Bennett, the chief spokespersons, and that therefore the communication to Thompson was not a valid communication of impasse. The ALJ did not find the ground rules to be so limited, noting they state that the chief spokespersons are responsible for coordinating communications between the parties. According to the ALJ, Sermersheim did this when she directed Thompson to ask the County when it would implement the furlough suspension. The County replied, providing the agenda which, according to the ALJ, indicated the County believed the parties were at impasse. SEIU did not deny receipt of the agenda or dispute the County's belief that the parties were at impasse. The County reasonably concluded that SEIU had no further proposals, movement, or a desire to continue negotiations, and properly determined the parties were at impasse, according to the ALJ.

Third, the ALJ concluded that the County did not re-impose the terms of its July 26 LBFO. The Board of Supervisors approved an agenda item to "maintain the status quo regarding the terms and conditions of employment." Under prior MMBA section 3505.4, after concluding impasse procedures, an employer is not required to implement its LBFO, according to the ALJ, relying on *Clovis, supra,* PERB Decision No. 2074-M. The ALJ concluded that SEIU's belief that when it did not continue negotiations, the County was required to implement the LBFO containing the suspension of the furloughs is erroneous under the law and Board precedent. The County was not obligated to implement the LBFO, according to the ALJ, and therefore, it did not bargain in bad faith by acknowledging that the parties were at impasse and reaffirming the status quo.

The ALJ concluded that a review of the totality of the County's conduct does not demonstrate that it failed to bargain in good faith during changed circumstances negotiations.

DISCUSSION

SEIU does not except to the ALJ's findings of fact. With regard to SEIU's exceptions to the ALJ's conclusions of law, SEIU repeats a number of arguments that were adequately addressed by the ALJ without indicating any errors in law by the ALJ. However, for the sake of clarity, we address SEIU's exceptions below.

I. Surface Bargaining Allegation

In its exceptions, SEIU contends that the ALJ erred by exonerating the County of surface bargaining. Specifically, SEIU asserts that the County entered negotiations with a pre-determined position: "no effort on [its] part could have moved the County off of its September 9, 2011 furlough proposal." (SEIU's Exceptions, p. 6.) It is impossible for the Board to assess this disingenuous argument, given that SEIU never proposed an alternative for using the one-time money available to the County. All of SEIU's proposals were predictably unacceptable to the County because they involved a commitment of ongoing funding, a commitment the County repeatedly explained it would not make at that time.

For the reasons explained by the ALJ, we join in her conclusion that the County's bargaining conduct in steadfastly adhering to its furlough proposal, combined with a stated willingness to entertain alternate proposals for the use of its one-time money, did not evidence surface bargaining. Contrary to SEIU's contention, the ALJ did not treat "changed circumstances" bargaining as something less than a continuation of full negotiations over a successor MOU. Although the ALJ correctly notes that the County engaged in permissible hard bargaining over the expenditure of "one-time monies," based on its legitimate concern over ongoing monetary obligations beyond the newly discovered funds, the ALJ also correctly

notes that the County was willing to negotiate over all mandatory subjects of bargaining, not just furloughs or expenditure of "one-time monies." SEIU does not provide support for its argument that the County failed to adequately consider any of its proposals in good faith.

Furthermore, SEIU does not except to the ALJ's finding of fact that the County did not oppose SEIU's request to re-open all issues from the prior round of bargaining, but rather stated that it was not in a position to agree to economic terms that would result in ongoing expenses, because the funds were one-time monies. (Proposed Dec., p. 4.) SEIU does not except to the ALJ's finding of fact that the County was open to other ways to utilize the one-time funds, and had done so in negotiations with at least two other bargaining units. (Proposed Dec., p. 10.)

As the ALJ found, both parties engaged in hard bargaining in order to maintain their respective positions. The County wanted to avoid ongoing expenses in excess of the $1.8 million in one-time monies. SEIU, on the other hand, "believed it was necessary to restore merit increases to reach agreement on a new contract." (Proposed Dec., p. 10.) All of these facts support the ALJ's conclusion that the County did not bargain in bad faith.

II. Deadline for Conclusion of Negotiations

SEIU also asserts that the County prematurely ended negotiations by setting an arbitrary deadline for bargaining to conclude, contending that the County acted arbitrarily when it presented its LBFO on November 16, and requested SEIU's response by December 5, and failed to explain why it set that date or what would happen after December 5. SEIU excepts to the ALJ's failure to conclude that this conduct arbitrarily broke off negotiations, despite the absence of a bona fide impasse; that the County failed to provide SEIU notice or opportunity to bargain over its belated decision to maintain a furlough program; and that the County had no intention to negotiate over economic items other than furloughs. SEIU also

excepts to the ALJ's alleged treatment of the "changed circumstances" negotiations as something less than a continuation of full negotiations over a successor MOU, but instead as pertaining to the discrete subject of expenditure of "one-time monies."

The ALJ correctly concluded that the County's request that SEIU respond to its LBFO by a date certain was not the equivalent of cutting off bargaining by that date. SEIU cited to no authority holding that an employer's request that a union respond to a LBFO by a particular date suggests a lack of intent to bargain in good faith. Nor did SEIU present facts that could lead to a conclusion that the County somehow violated the MMBA by failing to explain what would happen if the December 5 deadline came and went without a response from SEIU. In the absence of any evidence that SEIU asked at the bargaining table about the consequences of not responding by the deadline, its querulous complaint that the consequences were not explained to it can hardly be taken seriously.

SEIU's reliance on *County of Riverside* (2014) PERB Decision No. 2360-M (*Riverside*) for the proposition that it is an unfair practice to create an arbitrary deadline to complete negotiations is inapposite in this case. In *Riverside,* p. 16, the Board determined that the employer declared impasse for the purpose of unilaterally imposing a freeze in step increases before the end of its budget year. There was evidence that negotiations were progressing and that the union had informed the employer that it had room to move. Based on these facts, the Board concluded that the employer had prematurely declared impasse and imposed its LBFO in violation of the MMBA. Here, there was no evidence that the County rushed to impasse or set an arbitrary date after which negotiations would be deemed concluded. The County simply asked for a response to its LBFO, and gave SEIU three weeks to do so. This is not unreasonable conduct in the context of these negotiations, and it did not necessarily conclude negotiations. Nor was there any evidence that SEIU had further room to move from its

consistent rejection of the furlough restoration proposal. This is especially true in light of the fact that it failed to respond to the LBFO at all, either before or after the County's deadline of December 5.

III. Declaration of Impasse

SEIU contends that the County prematurely declared impasse without telling an authorized agent of SEIU that it had done so, and excepts to the ALJ's conclusion to the contrary.

In concluding that the County's providing a Board agenda to SEIU was sufficient notice that it was declaring impasse, the ALJ relied on *Victor Valley Union High School District* (1986) PERB Decision No. 565 (*Victor Valley*), the Board held:

> An agenda may suffice if it is delivered to a proper official and is presented in a manner reasonably calculated to draw attention to any item(s) reflecting a proposed change in a matter within the scope of representation.

(*Id.* at p. 6, fn. 6. See also, *County of Santa Clara* (2013) PERB Decision No. 2321-M (*Santa Clara*).)

SEIU argues that Thompson was not a "proper official" under the *Victor Valley, supra,* PERB Decision No. 565 standard, because the parties' ground rules authorized only Bennett to speak on behalf of the County and only Sermersheim to speak on behalf of SEIU, as they were solely responsible for "coordinating the communications between the parties." Therefore, SEIU argues, any communication between Thompson and Martin could not constitute notice of impasse, and SEIU did not clearly and unequivocally waive its right to receive notice of the County's decision to maintain furloughs. SEIU also argues that under *Santa Clara, supra,* PERB Decision No. 2321-M, Martin's e-mail to Thompson attaching the agenda did not clearly and unequivocally notify SEIU that the County would maintain the previously imposed

furlough program, but rather merely stated that the agenda was being presented to the Board of Supervisors for consideration.

We agree with the ALJ that the parties' ground rules do not require that communications between them go through only the chief spokespersons. The ground rules provide only that the spokespersons are responsible for coordinating communications between the parties. The ALJ's factual finding that that coordination is what occurred when Sermersheim directed Thompson to ask the County when it would implement the furlough restoration is supported by the record.

We also affirm the ALJ's conclusion that under *Victor Valley, supra,* PERB Decision No. 565, the County clearly placed SEIU on notice that it believed SEIU had not accepted its LBFO and that the parties "are again at an impasse" when on December 9, it sent Thompson the agenda item for the December 13 Board of Supervisors meeting.[7] This same notice also clearly informed SEIU that the County was recommending to the Board of Supervisors that the "Board make no change to the terms and conditions of employment for employees represented by SEIU." In what we assume to be feigned obtuseness, SEIU claims in its exceptions that this did not clearly communicate that the County was proposing to "re-impose" the earlier furlough program. We cannot discern any alternative meaning to the words used in the agenda item. The County never rescinded the furloughs for SEIU bargaining units. To "make no change" in this context can only mean that the furloughs will not be rescinded—that this term and condition of employment will remain as it was before this round of negotiations commenced in September.

[7] SEIU did not except to the ALJ's finding of fact that "SEIU did not deny receipt of the agenda or dispute the County's belief that the parties were at impasse." (Proposed Dec., p. 13.)

IV. Failure to Implement the Terms of Its Most Recent LBFO

SEIU contends that the ALJ erred in relying on *Clovis, supra,* PERB Decision No. 2074-M in concluding that the County was not obliged to impose its LBFO. It argues (1) that the County imposed terms that were not reasonably comprehended within its most recent LBFO; (2) that the County violated the MMBA by rushing to impasse and re-imposing the terms of its initial, less favorable LBFO (imposed on July 26), rather than the terms of its most recent November 2011 LBFO, although further bargaining sessions might have proven fruitful; and (3) that the County had a duty to notify SEIU that the County would re-impose its earlier LBFO by not rescinding the furloughs for SEIU members. SEIU excepts to the ALJ's conclusions to the contrary.

SEIU urges the Board to write a new bright line rule: if an employer does not intend to unilaterally impose a LBFO that objectively benefits bargaining unit members, it must first: (1) have either presented the exclusive representative with a LBFO that was written in the alternative (e.g., option A: rescind furloughs; option B: maintain existing furloughs) and have reached true impasse with regard to that proposal, or it must (2) actually notify the representative that it will not implement the offer and provide the exclusive representative an opportunity for further bargaining, at which time the exclusive representative can accept or reject the employer's earlier objectively beneficial offer.

In *Clovis, supra*, PERB Decision No. 2074-M, PERB held that under former MMBA section 3505.4 (now § 3505.7), once impasse has been properly reached, a public agency "may implement its last, best, and final offer." (*Clovis*, p. 5, fn. 5.) "May" is permissive, not mandatory, an interpretation that is logical and for which there is no basis to question.

Equally important is the fact that the doctrine embodied in MMBA section 3505.7 and our precedents interpreting other statutes permit the employer to effect certain unilateral

changes—imposing its LBFO—after completing in good faith the negotiating process.[8] No unilateral change occurred here. Instead, the County opted *not* to impose its furlough rescission on an unwilling bargaining unit.

SEIU argues that the County was obligated to implement its most recent LBFO, and seeks to distinguish *Clovis, supra*, PERB Decision No. 2074-M on a variety of grounds which we now discuss. First, SEIU points out that *Clovis* involved bargaining over a wage reopener, whereas here, the parties were allegedly bargaining over a full successor MOU. Because the County requested to bargain after it discovered a budget surplus in August and admitted these were "changed circumstances" negotiations, the impasse of July was broken and there were numerous items on the table when the County "broke off negotiations," according to SEIU. While this may be a factual distinction between *Clovis* and this case, SEIU fails to explain and we cannot discern why this distinction requires an exception to MMBA section 3505.7.

Secondly, SEIU points out that in *Clovis, supra*, PERB Decision No. 2074-M, the union rejected the city's LBFO, assuming the employer would impose its proposed 3 percent wage increase; whereas here, SEIU never rejected the County's offer to rescind furloughs. This

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[8] We note that PERB held in *Modesto City Schools* (1983) PERB Decision No. 291, in pertinent part:

> [National Labor Relations Board] NLRB precedent has wisely limited post-impasse *unilateral changes* to the confines of pre-impasse offers rejected by the union. [Citation omitted.] The changes implemented need not be exactly those offered during negotiations, but must be reasonably "comprehended within the impasse proposals." [Citations omitted.]
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> . . . [M]atters reasonably comprehended within pre-impasse negotiations include neither proposals better than the last best offer nor proposals less than the status quo which were not previously discussed at the table.

(Emphasis added.)

assertion is patently untrue. As the ALJ found (and to which SEIU did not except), SEIU rejected the County's November 16 proposal to suspend furloughs, restore wage reductions, and maintain remaining terms and conditions set forth in its unilateral imposition of July 26. As early as October 5, SEIU made clear that it was not interested in talking about furloughs, because its members viewed them as the least onerous terms imposed by the County. There is a similarity between *Clovis* and this case that SEIU has ignored. In both cases, the union never *accepted* the LBFO. That fact provided additional justification in *Clovis* for the Board to refuse to require the city to implement its LBFO.

The fact that SEIU never declared impasse in this case, while the union in *Clovis, supra*, PERB Decision No. 2074-M did, is another distinguishing point, according to SEIU. Coupled with this assertion is SEIU's contention that the County was precluded from presuming SEIU's silence equated to a rejection of the November 16 offer, because only the chief spokespersons were permitted to speak for their principals. Again, this argument is at odds with the facts of this case. As the ALJ found, and to which SEIU did not except, SEIU determined that it would "let the County impose the furlough suspension and restore the wage reduction. SEIU did not therefore respond to the County [LBFO]." (Proposed Dec., p. 7.) Whether SEIU or the County declared impasse is completely irrelevant to whether the employer may decline to implement its LBFO when impasse is reached.

SEIU also urges that *Clovis, supra*, PERB Decision No. 2074-M be overruled to the extent that it can be read to permit an employer to refrain from implementing an objectively beneficial proposal without providing notice to the exclusive representative that it intends to do so. SEIU argues that despite the permissive language of MMBA section 3505.7, the legislative purpose of the MMBA, to "promote full communications between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and

other terms and conditions of employment between public employers and public employee organizations" (MMBA, § 3500), is ill-served if an employer may unilaterally decide *not* to implement an objectively beneficial LBFO without providing an exclusive representative notice and an opportunity to bargain over that decision. This argument ignores the fact that SEIU did have notice and an opportunity to bargain over what to do with the one-time surplus. It rejected the County's proposal to rescind the furlough and put 1.9 percent more salary in members' pockets, and apparently miscalculated about whether the County would impose its proposal. Having passed up an opportunity to agree to "an objectively beneficial" proposal, it cannot now complain that it was surprised by the County's entirely reasonable decision not to impose something that SEIU repeatedly said it was not interested in.

The ALJ's reading of *Clovis, supra*, PERB Decision No. 2074-M is consistent with PERB authority, including *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2130-S, which states (quoting *Rowland Unified School District* (1994) PERB Decision No. 1053): "Once impasse is reached either party may refuse to negotiate further and the employer is free to implement changes reasonably comprehended within its last, best and final offer." (*Id.* at p. 7.) This language makes clear that the County retains the discretion to refrain from implementing the terms of its LBFO, for if an employer may implement changes reasonably comprehended within its LBFO, it may also choose to implement no changes.

See also, *Comau, Inc.* (2010) 356 NLRB No. 21, enf. denied on other grounds by *Comau, Inc. v. N.L.R.B.*, 671 F.3d 1232, 1237 (D.C. Cir. 2012), that "An employer generally may implement some or all of the terms and conditions of employment that are reasonably comprehended by the employer's pre-impasse proposals if the parties have reached an overall impasse." (*Id.* at p. 12.)

Under this language, the employer has no affirmative obligation to implement its LBFO, especially where, as here, the union has not accepted the LBFO and has manifested clear objection to the proposed change. The employer's only obligation is to refrain from implementing changes not reasonably comprehended in its LBFO. Where the employer has not changed anything but simply maintained the status quo after impasse, it has not violated its duty to meet and confer in good faith before implementing changes in negotiable terms and conditions of employment. We therefore decline to overrule *Clovis, supra*, PERB Decision No. 2074-M.

Nor do we accept SEIU's invitation to create a "bright-line" rule requiring an employer to either: (1) submit its LBFO in alternative forms giving an exclusive representative a chance to either accept the furlough rescission or maintain furloughs, assuming the parties have reached true impasse on such alternative proposal, or (2) notify the exclusive representative that the employer will not implement the LBFO and provide the exclusive representative with an opportunity for further negotiation. Such a rule inserts a new requirement into MMBA section 3505.7. This section requires as a prerequisite for an employer implementing its LBFO that applicable mediation and factfinding procedures be exhausted and that a public meeting be held regarding the impasse. No other requirements have been imposed by the Legislature. It is up to the Legislature to do so if it sees fit, and this Board will not read additional requirements into MMBA section 3505.7.

ORDER

The complaint and underlying unfair practice charge in Case No. SA-CE-782-M are hereby DISMISSED.

Members Huguenin and Gregersen joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521, Charging Party, v. COUNTY OF TULARE, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-782-M PROPOSED DECISION (10/31/2014)

Appearances: Weinberg, Roger & Rosenfeld by Kerianne R. Steele, Attorney, for Service Employees International Union, Local 521; Renne Sloan Holtzman Sakai by Erich W. Shiners, Attorney, for County of Tulare.

Before Robin W. Wesley, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges that a public agency employer failed to bargain in good faith during changed circumstances negotiations in violation of the Meyers-Milias-Brown Act (MMBA).[1] The employer denies violating the MMBA.

On February 13, 2012, Service Employees International Union, Local 521 (SEIU) filed an unfair practice charge against the County of Tulare (County). The County filed a position statement in response to the charge on March 13, 2012.

On August 15, 2012, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint that alleged the County failed to bargain in good faith by insisting upon its initial bargaining proposal throughout negotiations, improperly concluding the parties were at impasse, and re-imposing the terms of the County's July 26, 2011 last, best, and final offer (LBFO), rather than imposing the County's

[1] The MMBA is codified at Government Code section 3500 et seq. All statutory references are to the Government Code, unless otherwise stated.

November 16, 2011 LBFO made in the changed circumstances negotiations. This conduct is alleged to have violated MMBA sections 3503, 3505, 3506, and 3506.5(a), (b), and (c); and constitute an unfair practice under MMBA section 3509(b) and PERB Regulations 32603(a), (b), and (c).[2]

The County filed an answer to the complaint on September 10, 2012, denying the material allegations and asserting affirmative defenses.

The parties participated in a settlement conference on October 15, 2012, but the matter was not resolved. A formal hearing was held on March 5, 2013. The case was submitted for decision following receipt of post-hearing briefs.

FINDINGS OF FACT

The County is a public agency within the meaning of MMBA section 3501(c) and PERB Regulation 32016(a). SEIU is an exclusive representative within the meaning of PERB Regulation 32016(b). SEIU represents employees in five County bargaining units: Unit 1 – Clerical and Related, Unit 3 – Technical & Vocational, Unit 4 – Social Services, Unit 6 – Health Services, and Unit 7 – Supervisors & Staff Management. At all times relevant, SEIU negotiated on behalf of all five units at one table.

SEIU and the County were parties to a Memorandum of Understanding (MOU) covering all five bargaining units, effective August 1, 2009, through July 31, 2011. Under the MOU, merit step increases and promotions in flexibly allocated classifications were frozen. In addition, employees were furloughed 40 hours per year, a wage reduction of 1.92 percent.

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

The parties engaged in successor negotiations in 2011,[3] but did not reach agreement. On July 26, the County Board of Supervisors voted to impose terms and conditions of employment effective August 1, including continuing the freeze on merit increases and flex promotions, and extending the furloughs.[4]

In August, the County learned that its general fund balance at the end of fiscal year 2010-2011 was $3.5 million greater than anticipated. On August 24, the County requested to meet and confer with SEIU due to the "changed circumstances."

On September 6, SEIU requested financial information and copies of agreements reached with other unions.[5]

The parties first met on September 9. SEIU Chief Elected Officer Kristina Sermersheim (Sermersheim) served as Chief Spokesperson. Attorney Shelline Bennett (Bennett), was the County Chief Spokesperson. The County submitted a proposal to suspend furloughs for one year, restore the 1.92 percent wage reduction, and maintain all other terms and conditions of employment. Bennett stated that the $3.5 million was one-time money, and the SEIU bargaining units' share of the funds was $1.8 million. The County believed that suspending furloughs was the most equitable way to give money to employees as soon as

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[3] Hereafter, all dates refer to 2011, unless otherwise stated.

[4] The continued freeze on merit increases and flex promotions is the subject of another unfair practice charge pending before the Board (SA-CE-748-M).

[5] Between August 24 and September 9, the County reached agreement with all employee organizations except SEIU and one other union to suspend furloughs for 2011-2012, and restore the 1.92 percent wage reduction. By September 20, the other union reached agreement on suspension of furloughs, and the Board of Supervisors approved the furlough suspensions for all County employees except SEIU represented employees, as SEIU and the County were still negotiating.

possible. Bennett advised that all other bargaining units except one had reached agreement on suspending the furloughs.[6]

SEIU responded that all issues from the prior round of bargaining must be re-opened based on the changed circumstances, and bargaining was not limited to furloughs. Bennett replied that the County was not opposed, but because the funds were one-time monies the County was not in a position to agree to economic terms that would result in ongoing expenses.

SEIU requested additional information on budgeted health insurance costs, the value of monetary concessions agreed to by other bargaining units, and the number of employees eligible for a flex promotion.

On October 3, the County responded by email to SEIU's information requests attaching some information, directing SEIU to County websites for certain financial information, and stating that it would address the remaining requests at the October 5 bargaining session. The County also attached its initial September 9 proposal, and its ground rules proposal.

On October 5, the parties signed ground rules, providing, in part:

> 5. Chief Spokespersons: The Chief Spokesperson for Tulare County will be Shelline Bennett of Liebert Cassidy Whitmore or the County's designee. The Chief Spokesperson for SEIU will be Kristy Sermersheim or SEIU's designee. The Chief Spokespersons are responsible for Tentative Agreements, scheduling meeting dates, and coordinating the communications between the parties.
>
> 6. Proposals: All formal proposals and counter-proposals will be made in writing. This rule does not prevent the parties from trading ideas or verbally presenting hypothetical "what if" proposals during negotiations. The parties will present all of their original proposals by the end of the 4th negotiation session unless the parties mutually agree otherwise.

[6] Employees in the units represented by the Tulare County Deputy Sheriff's Association were not furloughed but reached agreement to restore vacation accrual rates and the uniform allowance. Firefighters were also excluded from furloughs.

On October 5, the County addressed media reports that suggested it was not interested in considering anything other than the furlough proposal. Bennett assured SEIU that its proposal was not a "hasty take-it-or-leave-it" offer. Sermersheim responded that SEIU was not interested in talking about furloughs, as its members believed furloughs were the least onerous of the terms imposed by the County. Sermersheim stated repeatedly that SEIU wanted merit increases restored.

The parties discussed the cost of restoring merit step increases. Restoration of merit increases frozen since 2009 would cost $4.1 million. For 2011-2012, they would cost $1.3 million, and result in increased annual costs. Bennett stated that the County could not agree to restoring merit increases because of the ongoing expense, reiterating that the $1.8 million was one-time money. Sermersheim understood that ongoing expenses were costs the County must continue to pay beyond one fiscal year. She believed, however, that reaching agreement on a new contract would cost more than the $1.8 million in one-time money.

The parties also discussed health insurance. SEIU wanted to know if the County had saved any money on health premiums. Flex promotions were also discussed.

At the October 19 bargaining session, the parties further discussed SEIU's information requests, and continued to assess the cost of restoring merit increases. The County provided a spreadsheet listing each employee's merit step and the increased annualized cost of the merit increases. SEIU verbally proposed unfreezing merits, placing employees on the proper merit step, and then refreezing merit increases. The County responded that this was not a one-time cost as increased merit pay would result in ongoing expenses.

SEIU submitted its proposal during the November 3 bargaining session. SEIU proposed maintaining the furloughs, and restoring merit step increases and flex promotions, with corresponding wage increases retroactive to August 1. SEIU also proposed non-economic

items, and subjects not considered in the last round of negotiations, including a "loyal employee bonus pay" of two percent per year for employees at merit step five. Sermersheim reiterated that furloughs were the "least bad" aspect of the prior concessions, and employees would rather apply the additional money to merit increases, flex promotions, or health care premiums.[7]

Bennett repeated that the County could not agree to ongoing expenses. The County also presented a spreadsheet estimating the "go forward" cost of restoring flex promotions at an annual cost of $369,891.

During the November 16 bargaining session, the parties discussed SEIU's non-economic proposals. The County noted that many proposals were already in the Personnel Rules. Regarding SEIU's merit and flex promotion proposals, Bennett stated that unfreezing merit increases and flex promotions was an ongoing expense requiring additional funds.

The County presented its counterproposal, which included five of SEIU's non-economic proposals, suspension of furloughs, and maintaining the remaining "terms and conditions set forth by unilateral action on July 26, 2011."

SEIU rejected the County's counterproposal. Sermersheim expressed disappointment with the County's offer, and stated that SEIU did not want to spend the $1.8 million on furloughs. When Bennett asked for a response to the County's counterproposal, Sermersheim said SEIU could not provide one that evening because some bargaining team members had to leave by 5:00 p.m.

The County caucused, then presented SEIU with its LBFO, which was identical to its counterproposal. Bennett asked SEIU to respond to the LBFO by 5:00 p.m. on December 5.

[7] SEIU's proposal did not address health care premiums.

On November 21, Bennett emailed the LBFO to Sermersheim and again asked for a response by December 5.

After consulting with members, SEIU decided to let the County impose the furlough suspension and restore the wage reduction. SEIU did not therefore respond to the County.

SEIU Internal Organizers Miguel Espinoza (Espinoza) and Jason Thompson (Thompson) participated in the changed circumstances negotiations. On December 6, Espinoza and Thompson attended the County Board of Supervisors meeting. SEIU expected the County to impose the furlough suspension, but there was no agenda item on the SEIU negotiations. Espinoza and Thompson informed Sermersheim that there was nothing about the furlough suspension on the agenda. Sermersheim advised them to write to the County to ask when the matter would be on the Board of Supervisors' agenda.

On December 7, Thompson sent an email to Eric Martin (Martin), a member of the County's bargaining team, asking when the County intended to place the furlough suspension on the agenda. Human Resources Director Jeffrey Cardell (Cardell) interpreted Thompson's inquiry to mean that SEIU did not accept the County's LBFO, and SEIU believed the parties were at impasse. On December 9, Martin responded to Thompson, providing the agenda item for the December 13 Board of Supervisors meeting. The agenda item stated, in part:

> At the conclusion of the fifth meeting in three months, the County issued its last, best and final offer to SEIU on November 16, 2011, and requested that SEIU respond to this offer by the close of business on December 5. SEIU did not respond until December 7, when a representative inquired when the County would place the unilateral imposition of the furlough suspension on the Board Agenda. We understand from this message that SEIU does not accept the County offer and that the parties are again at an impasse.
>
> Therefore, it is recommended that the Board make no change to the terms and conditions of employment for employees represented by SEIU and approve the attached resolution to

maintain the status quo regarding the terms and conditions of employment with SEIU.

Cardell testified that the County did not unilaterally implement its LBFO because SEIU had stated it was not interested in the suspension of furloughs, and had not agreed to the proposal. Based on SEIU's lack of interest in the furlough suspension, the County decided to maintain the status quo. The County informed SEIU that it believed the parties were at impasse by transmitting a copy of the agenda item.

ISSUE

Did the County engage in surface bargaining in violation of the duty to bargain in good faith?

CONCLUSIONS OF LAW

MMBA section 3505 requires a public agency and a recognized employee organization to "meet and confer in good faith regarding wages, hours, and other terms and conditions of employment." It is an unfair practice for a public agency to "refuse or fail to meet and negotiate in good faith with a recognized employee organization." (MMBA §3506.5(c).) In determining whether a party has committed an unfair practice in violation of MMBA section 3506.5(c) and PERB Regulation 32603(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Stockton Unified School District* (1980) PERB Decision No. 143.)

The complaint alleges that the County engaged in bad faith or "surface" bargaining during changed circumstances negotiations. 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.) PERB has held that it is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement.

(*Muroc Unified School District* (1978) PERB Decision No. 80.) Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (*Oakland Unified School District* (1982) PERB Decision No. 275; *Placentia Fire Fighters v. City of Placentia, supra*, 57 Cal.App.3d 9.)

Insistence on County Proposal

The complaint alleges that the County failed to bargain in good faith by insisting upon its initial bargaining proposal throughout negotiations. Entering negotiations with a "take-it-or-leave-it" attitude evidences a failure of the duty to bargain in good faith because it amounts to merely going through the motions of negotiations. (*General Electric Co.* (1964) 150 NLRB 192, 194, enf. 418 F.2d 736.) Adamant insistence on a bargaining position, however, is not necessarily a refusal to bargain in good faith. (*Placentia Fire Fighters v. City of Placentia, supra*, 57 Cal.App.3d 9, 25; *Oakland Unified School District, supra*, PERB Decision No. 275.) "The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained." (*NLRB v. Herman Sausage Co.* (5th Cir. 1960) 275 F.2d 229.)

PERB has found an employer engaged in lawful "hard bargaining" when its proposal to maintain the status quo was supported by rational arguments that were communicated to the union during bargaining. (*Regents of the University of California* (2010) PERB Decision No. 2094-H; *California State University* (1990) PERB Decision No. 799-H; *Oakland Unified School District* (1981) PERB Decision No. 178.) The obligation to bargain in good faith requires the parties to explain the reasons for a particular bargaining position with sufficient detail to "permit the negotiating process to proceed on the basis of mutual understanding."

(*Jefferson School District* (1980) PERB Decision No. 133; *State of California (Department of Corrections & Rehabilitation)* (2010) PERB Decision No. 2108-S.)

The County clearly maintained its position that the $1.8 million in additional funds was one-time money, and it could not agree to proposals resulting in ongoing expenses. At the first bargaining session, the County presented its furlough suspension proposal, explaining that this was the fastest, most equitable way to allocate the money to employees. When SEIU responded that it wanted to resume negotiations for a new contract due to the changed circumstances, the County did not object. SEIU made it equally clear, however, it was not interested in the suspension of furloughs, but wanted merit step increases restored. In response, the County informed SEIU that it could not afford an increase in ongoing expenses.

The parties extensively reviewed financial information and discussed the costs of merit increases and flex promotions. While Sermersheim understood the distinction between the one-time money and ongoing expenses, she believed it was necessary to restore merit increases to reach agreement on a new contract.

The County was open to other ways to utilize the one-time funds, and had done so in negotiations with at least two other bargaining units. While SEIU mentioned health insurance benefits at the table, it never submitted a proposal addressing this subject. Nor did SEIU propose any other use of the additional funds that would not result in ongoing costs. Contrary to SEIU's assertion, the County was not required to provide new proposals for the one-time money once SEIU rejected the furlough suspension.

The County took a firm position that the $1.8 million was one-time money, and it could not afford ongoing expenses. The County did not, however, insist that the only method to allocate the funds to employees was by suspending the furloughs. The County engaged in lawful "hard bargaining" when it maintained a rational position that it could not afford to

spend more than the one-time money, and this position was communicated to SEIU at each bargaining session. SEIU has, therefore, not established that the County unlawfully insisted upon its initial position by entering negotiations with a "take-it-or-leave-it" attitude.

Impasse Determination

The complaint alleges the County improperly concluded the parties were at impasse. The Board has held that an unfounded or premature declaration of impasse may demonstrate bad faith bargaining under the totality of the circumstances analysis. (*Rio School District* (2008) PERB Decision No. 1986; *Kings In-Home Supportive Services Public Authority* (2009) PERB Decision No. 2009-M; *County of Riverside* (2014) PERB Decision No. 2360-M; *Regents of the University of California* (1985) PERB Decision No. 520-H.) In *Mt. San Antonio Community College District* (1981) PERB Order No. Ad-124, the Board determined that "impasse exists where the parties have considered each other's proposal and counterproposals, attempted to narrow the gap of disagreement and have, nonetheless, reached the point in their negotiations where continued discussion would be futile." In *Modesto City Schools* (1983) PERB Decision No. 291, the Board described impasse as the "point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless." In *County of Riverside*, *supra*, PERB Decision No. 2360-M, the Board held that no bona fide impasse exists where an employer sets an arbitrary deadline for negotiations, or when a union continues to display flexibility and willingness to compromise.

SEIU contends that the County imposed an arbitrary deadline to complete negotiations when it requested a response to the LBFO by December 5. SEIU also asserts the parties were not deadlocked; nor were their differences so substantial that future meetings would be futile. Finally, SEIU claims that no County representative directly communicated to SEIU that the parties were at impasse.

The County initiated changed circumstances negotiations at the conclusion of the 2010-2011 fiscal year when it learned that its general fund balance was greater than anticipated. When SEIU demanded to resume successor agreement negotiations, the County did not object, and the parties extensively explored SEIU's economic proposals to restore merit increases and flex promotions. The parties reviewed and discussed financial information showing what each proposal would cost in 2011-2012, and ensuing fiscal years. SEIU and the County also discussed SEIU's non-economic proposals. The County provided documents showing that some of the non-economic proposals were addressed in existing personnel rules.

At each bargaining session, the County stated that it had one-time money to allocate to employees, but could not afford ongoing expenses. SEIU insisted, in turn, upon restoration of merit step increases, which would result in ongoing expenses. SEIU never submitted a proposal for use of the one-time funds.

On November 16, at the conclusion of the fifth bargaining session, the County presented its LBFO, and requested a response by December 5. There is no evidence the County set an arbitrary deadline. The County did not insist that negotiations conclude by a certain time, and it took no action when SEIU did not respond by the requested date.

Further, SEIU did not communicate to the County at any point that it had any movement or new proposals. SEIU did not respond to the LBFO after consulting with its members and deciding to take no further action, believing the County would unilaterally implement its LBFO. When there was no action by the Board of Supervisors on December 6, SEIU asked the County when it intended to implement the furlough suspension. There is no evidence that SEIU continued to display flexibility or a willingness to compromise. Rather, SEIU's conduct demonstrated that it believed further discussions would be futile. (*Mt. San Antonio Community College District, supra*, PERB Order No. Ad-124.)

Once SEIU asked when the County planned to implement the furlough suspension, the County communicated its belief that the parties were at impasse by sending SEIU an agenda item which expressly stated that an impasse existed. An agenda item may suffice to provide notice if it is delivered to a proper official and is presented in a manner reasonably calculated to draw attention. (*Victor Valley Union High School District* (1986) PERB Decision No. 565; *County of Santa Clara* (2013) PERB Decision No. 2321-M.)

SEIU contends that the ground rules required communications only between Sermersheim and Bennett, the Chief Spokespersons. The ground rules are not so limited. They state that the Chief Spokespersons are responsible for coordinating communications between the parties. Sermersheim did this when she directed Thompson to ask the County when it would implement the furlough suspension. The County replied, providing the agenda which indicated the County believed the parties were at impasse. SEIU did not deny receipt of the agenda or dispute the County's belief that the parties were at impasse. The County reasonably concluded that SEIU had no further proposals, movement, or a desire to continue negotiations, and properly determined the parties were at impasse.

Imposition of Last, Best and Final Offer

The complaint also alleges the County engaged in surface bargaining by re-imposing the terms of its July 26 LBFO, rather than the terms of the November 16 LBFO presented during changed circumstances negotiations.

SEIU contends that the County was obligated to either continue negotiations, or impose the terms of its November 16 LBFO. SEIU asserts that any change unilaterally implemented must be reasonably comprehended in a pre-impasse offer. SEIU argues that it was never comprehended during negotiations that the County would not implement the furlough suspension, or any other reimbursement amounting to 1.92 percent of employee wages.

The evidence does not establish that the County re-imposed the terms of its July 26 LBFO. The Board of Supervisors approved an agenda item to "maintain the status quo regarding the terms and conditions of employment." Under prior MMBA section 3505.4,[8] after concluding impasse procedures, an employer is not required to implement its LBFO. (See also *City of Clovis* (2009) PERB Decision No. 2074-M.)

In *City of Clovis*, *supra*, PERB Decision No. 2074-M, the union twice rejected the city's final offers. The union assumed the city would then implement its LBFO, which contained a wage increase, but the city took no action to implement. The Board noted that MMBA section 3505.4 provides that an employer "*may* implement its last, best and final offer," concluding that the provision is permissive and not mandatory, and an employer is therefore not obligated to implement its LBFO.

SEIU similarly assumed that the County would implement the LBFO to suspend furloughs and restore the 1.92 percent wage reduction. Just as in *City of Clovis*, *supra*, PERB

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[8] MMBA 3505.4 was repealed and reenacted effective January 1, 2012. During the period the parties were engaged in meeting and conferring, the prior provisions of MMBA section 3505.4 were in effect and applicable here. The prior provisions of MMBA section 3505.4 state:

> 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 substance of these provisions can now be found at MMBA section 3505.7.

Decision No. 2074-M, however, the County did not implement. The Board of Supervisors simply reaffirmed the status quo. By doing so, the County did not make any change to the employees' terms and conditions of employment. SEIU's belief that when it did not continue negotiations, the County was required to implement the LBFO containing the suspension of the furloughs, is simply erroneous under the law and Board precedent. The County was not obligated to implement the LBFO, therefore, it did not bargain in bad faith by acknowledging that the parties were at impasse and reaffirming the status quo.

A review of the totality of the County's conduct does not demonstrate that it failed to bargain in good faith during changed circumstances negotiations.

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. SA-CE-782-M, *Service Employees International Union, Local 521 v. County of Tulare*, 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
E-FILE: PERBe-file.Appeals@perb.ca.gov

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 or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 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, 32091 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).)