

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



BUTTE COUNTY EMPLOYEES ASSOCIATION
LOCAL 1,

Charging Party,

v.

COUNTY OF BUTTE,

Respondent.

Case No. SA-CE-871-M

PERB Decision No. 2492-M

June 30, 2016

Appearances: Leonard Carder LLP, by Arthur Liou, Attorney, for Butte County Employees Association Local 1; Bruce Alpert, County Counsel, for County of Butte.

Before Winslow, Banks, and Gregersen, Members.

DECISION

WINSLOW, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions by County of Butte (County) of a proposed decision (PD) by an administrative law judge (ALJ). The complaint alleged that the County violated the Meyers-Milias-Brown Act (MMBA)¹ by (1) unreasonably enforcing its local rules regarding determinations of appropriate units; (2) unreasonably enforcing its local rule regarding unit modification petitions; (3) ceasing dues and agency fee deductions and remittance thereof to Butte County Employees Association Local 1(BCEA) for the employees in a proposed new bargaining unit; (4) withdrawing recognition of BCEA as the exclusive representative of the subject employees and refusing to bargain in good faith with BCEA; and (5) interfering with

¹MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. The text of the MMBA and the Board's Regulations may be found www.perb.ca.gov.

the rights of employees and the employee organizations when it failed to maintain strict neutrality during a decertification election. The complaint alleged that this conduct constituted a violation of MMBA sections 3503, 3505, 3506, 3506.5, subdivision (a), 3509, subdivision (b), as well as PERB Regulations 32603, subdivisions (a), (b), (c), (f) and (g).²

The ALJ found in favor of BCEA, concluding that the application of the County's rules requiring BCEA to "qualify" for a unit modification ballot was unreasonable since BCEA remained the exclusive representative of the proposed unit; that the County's decision to discontinue employee dues deductions on May 24, 2014 (prior to the certification of election results in August 2014) was unlawful; and that the County had impermissibly interfered with employee free choice in violation of the MMBA.

Neither BCEA nor the County excepted to the merits of the proposed decision, but the County excepted to the proposed order requiring it, as opposed to its employees, to pay back dues to BCEA.³ Therefore, the sole issue before the Board is the appropriateness of that order.

We have reviewed the entire record in this case, including the exceptions and responses thereto, and affirm the ALJ's remedy which is well-reasoned and consistent with applicable law.

FACTUAL SUMMARY

The parties filed a joint Stipulation of Facts with numerous attachments in lieu of a hearing. According to the Stipulation of Facts and attachments, BCEA is the recognized exclusive bargaining representative for the General Unit within the County. BCEA and the

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

³ In accordance with PERB regulation 32305, the merits of the proposed decision have become final and binding on the parties to this case.

County are parties to a memorandum of understanding (MOU) covering the General Unit with a term of February 11, 2014 through February 12, 2016.

By resolution of the County Board of Supervisors, the County has adopted the County of Butte Merit System and Personnel Rules (Personnel Rules), which include employer-employee relations rules and regulations adopted pursuant to Government Code section 3507. BCEA has represented the General Unit since at least 1989.

After filing two unsuccessful unit modification petitions to create a new “Public Works” bargaining unit to consist primarily of road maintenance and landfill classifications, United Public Employees of California, Local 792 (UPEC) filed a third unit modification and recognition petition, which again sought to transfer particular classifications from the General Unit into a new proposed Public Works and Skilled Trades Unit. The petition also sought to have UPEC recognized as the exclusive representative for the proposed unit.

After County Director of Human Resources Brian Ring (Ring) met with representatives of both BCEA and UPEC to discuss the petition and questions about the appropriateness of the proposed unit, Ring notified UPEC and BCEA representatives in writing that the UPEC petition met the County’s Personnel Rules requirements and that the proposed new unit would be approved as an appropriate unit.

BCEA appealed the determination with the County, but the Board of Supervisors upheld Ring’s unit modification determination.

Prior to the County scheduling an election to determine the representative of the new unit, the County stopped deducting membership dues and agency fees for positions in the new Public Works and Skilled Trades Unit.

At a meeting between Ring and John Bonilla (Bonilla), the executive director of BCEA, Ring inquired as to why BCEA had not yet submitted the required proof of support to be included on the ballot in the upcoming election for the new unit. Although Bonilla did not believe that BCEA needed to qualify for the ballot, because his understanding was that BCEA continued to be the exclusive representative for the new unit, Ring told Bonilla that BCEA was not the exclusive representative for the new unit, and would need to submit signatures from 30% of the new unit by June 19, 2014 in order to be put on the ballot. Later, BCEA submitted sufficient signatures to qualify for the ballot.

When the ballots submitted during the election were counted, UPEC was recognized as the exclusive representative for the new unit. BCEA did not file any challenges to this election and did not seek to have its results nullified.

The final paragraph of the parties' Stipulation of Facts included a statement of "the only remaining issues" to be resolved by PERB. According to the parties, these issues were:

- 1) Whether the County committed an unfair practice in withdrawing recognition from BCEA before the August [unit modification] election could be held in the new Public Works and Skilled Trades unit;
- 2) Whether the County committed an unfair practice in ceasing to collect dues from those employees in classifications that were transferred to the new Public Works and Skilled Trades unit; and
- 3) Whether the County committed an unfair practice in requiring BCEA to submit a recognition petition and demonstrate proof of support to appear on the August 22, 2014 ballot.

PROPOSED DECISION

In light of the parties' stipulation, the ALJ concluded that the parties had withdrawn two allegations: (1) that the County unreasonably adopted or enforced its local rules regarding the determination of appropriate units, and (2) that the County's determination of appropriate

units is evidence of a violation of MMBA section 3506.5, subdivision (d).⁴ Accordingly, the ALJ deemed that both allegations were dismissed. Neither party excepted to this conclusion by the ALJ.

According to the ALJ, the parties presented the remaining issues differently than they were presented in PERB's complaint, the remaining issues were whether the County's adoption or enforcement of its unit modification rules was reasonable, and whether the County interfered with employee choice during the election.

The ALJ concluded that the application of the County's rules to require BCEA to "qualify" for a unit modification ballot by submitting proof of support was unreasonable, because until August 22, 2014, when the election results were certified, BCEA remained the exclusive recognized employee organization with all rights and duties attendant to that status. According to the ALJ, it was also unlawful for the County to discontinue employee dues deductions on May 24, 2014—prior to the certification of election results in August 2014.

The ALJ also concluded that the County's actions discussed above—requiring BCEA to "qualify" for the decertification election ballot, and refusing to remit dues and agency fees to BCEA—constituted a "withdrawal" of recognition by the County at a time when BCEA still enjoyed majority support in the bargaining unit, and when a decertification election was underway. According to the ALJ, such conduct had the tendency to influence employee choice by signaling a repudiation of the incumbent, BCEA, and a preference for the rival, UPEC. The ALJ concluded that the County had impermissibly interfered with employee free choice in violation of the MMBA.

⁴ MMBA section 3506.5, subdivision (d) prohibits a public employer from dominating or interfering with the formation or administration of employee organizations or from contributing financial or other support to any employee organization or from encouraging employees to join any organization in preference to another.

The ALJ ordered the County to remit to BCEA dues for the period beginning May 24, 2014, through August 22, 2014, plus interest in the amount of 7 percent per annum for all employees who were severed from the General Unit by virtue of the May 2014 creation of the Public Works and Skilled Trades unit.

COUNTY'S EXCEPTION

The County's sole exception is to the ALJ's dues remittance remedy, on the grounds that public agencies cannot financially support a union and cannot be ordered to pay union dues on behalf of bargaining unit employees. According to the County, the ALJ's remedy did not restore the status quo as nearly as possible to that which would have existed but for the unfair labor practice (which the ALJ identified as the purpose of a properly designed remedial order). The County requests that the order be amended to clarify that the County will, at BCEA's request, utilize the payroll deduction procedure to collect union dues from appropriate employees for the period of time at issue and pay those dues on the former bargaining unit members' behalf.

BCEA opposes the County's exception, arguing that there is clear PERB and National Labor Relations Board (NLRB) precedent for ordering the employer to pay back dues and fees when the employer's unfair practice resulted in the failure to remit the payments. In support of its position, BCEA points to *Regents of the University of California* (1983) PERB Decision No. 283-H and *Regents of the University of California* (2014) PERB Decision No. 2398-H, as well as the NLRB decision in *A.W. Farrel & Son, Inc.* (2014) 361 NLRB No. 162.

DISCUSSION

We affirm the ALJ's order that the County make BCEA whole for the dues the County failed and refused to remit between May 24, 2015 and August 22, 2015. As the ALJ

determined, the County unlawfully withdrew recognition from BCEA for this period of time, thereby denying affected employees representation by BCEA or any other organization. We have ordered similar remedies in the past, making clear that it was the employer's responsibility to make the union whole for unremitted dues and fees, especially when employees were denied representation as a result of the employer's wrongful act. (*Regents of the University of California, supra*, PERB Decision No. 2398-H; *City of Sacramento* (2013) PERB Decision No. 2351-M. See also *Hospitality Care Center* (1994) 314 NLRB 893, 895-896.) The appropriate remedy for an employer's unlawful failure to remit dues is to order that it, not employees, make the injured party, in this case, the employee organization, whole.

We reject the County's argument that such an order constitutes an impermissible support of labor organizations or an unlawful support of one union over another. MMBA section 3506.5, subdivision (d) makes it unlawful for an employer to "[d]ominate or interfere with the formation or administration of any employee organization, contribute financial or other support to any employee organization, or in any way encourage employees to join any organization in preference to another." Ordering the County to make BCEA whole for the County's wrongful failure to remit dues to which BCEA was entitled is not requiring the County to "contribute financial support" to BCEA in violation of the MMBA because the County is not giving the union anything of value to which the union was not already entitled under the MMBA. This is similar to *Los Rios Community College District* (1991) PERB Decision No. 867, where the Board upheld a determination by the Office of the General Counsel that an employer's agreement to pay up to 60 hours of release time to union representatives to process grievances did not constitute a violation of EERA section 3543.5,

subdivision (d) because EERA authorized the employer to provide reasonable release time for such activity.

The harm that MMBA section 3506.5, subdivision (d) is intended to prohibit includes: (1) employers financially assisting one union in preference over another (*Azusa Unified School District* (1977) EERB⁵ Decision No. 38); (2) employers establishing an employee organization to compete with or undermine an exclusive representative (*Redwoods Community College District* (1987) PERB Decision No. 650); or (3) employers influencing employee free choice by providing other non-financial assistance to an employee organization (*Santa Clarita Community College (College of the Canyons)* (2003) PERB Decision No. 1506 [unlawful to assist incumbent union by agreeing to expand bargaining unit while rival union was attempting to organize employees]). By ordering the County to make BCEA whole for the dues that BCEA would have received but for the County's unlawful withdrawal of recognition, PERB has not brought about any of the harm MMBA section 3506.5, subdivision (d) was intended to prevent. Ironically, the order remedies the County's conduct that actually favored one organization over another, according to the ALJ's conclusion. For these reasons, there is nothing improper or illegal about an order directing the County to pay BCEA the lost dues in question.

The County also cites to two PERB decisions in support of its position, *Fresno Unified School District* (1982) PERB Decision No. 208 and *San Mateo Community College District* (1985) PERB Decision No. 543. In these cases, the employer had not withdrawn recognition from the charging party employee organization. They are, therefore, of no assistance to the County's position.

⁵ Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

Lastly, the County asserts that the parties' 2014-2016 MOU (Joint Exh. 1) provides the only appropriate remedy, i.e. to charge employees. The MOU, Section 3.04 ("Dues/Service Fees"), subdivision (b), provides in relevant part:

If through error, the full amount due to be deducted is not deducted and remitted to the Association, the County will, upon written request from the Association and notice to the affected employee, provide subsequent deductions until the shortage is corrected. . . .

We also note MMBA section 3508.5, subdivision (c), which provides:

(c) Agency fee obligations, including, but not limited to, dues or agency fee deductions on behalf of a recognized employee organization, shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the public employer and the recognized employee organization.

(Emphasis added.)

Subdivision (b) is of no avail to the County for multiple reasons. First, PERB's remedial authority is determined by statute,⁶ not by a contractual agreement between parties. (*Laguna Salada Union School District* (1995) PERB Decision No. 1103, p. 18 ["The Board's statutory remedial powers cannot be limited or constrained by stipulation of the parties"]; *Dry Creek Joint Elementary School District* (1980) PERB Order No. 81a. See also *Regents of the University of California, supra*, PERB Decision No. 2398-H, p. 36-37 [Collective Bargaining Agreement cannot confer jurisdiction on PERB in conflict with statutory restriction on jurisdiction].)

Second, the County did not simply make an "error" in refusing to deduct dues for the entire group of employees in the proposed bargaining unit. It made a calculated decision that

⁶ EERA section 3541.3, subdivision (i), made applicable to the MMBA by MMBA section 3509, subdivision (a).

because a rival organization filed a representation petition for Public Works and Skilled Trades unit, BCEA no longer had majority support from the employees in that unit. The ALJ correctly determined that this decision violated the MMBA. Thus, the County's action cannot be characterized as an "error" but rather as an unlawful action.

From the context of the MOU quoted above (especially reference to "affected employee" in the singular), its purpose is to allow corrections in the amount of dues deducted from individual employees. It cannot be used to justify the County's attempt to make employees pay for its unlawful act. Moreover, the affected employees would not fall under the MOU section 3.04, subdivision (a) definition of "employee,"⁷ since the new Public Works and Skilled Trades Unit was not "mutually agreed upon by the Association and the County." (MOU section 3.04, subdivision (a).)

Nor can it be said that the language in section 3.04, subdivision (b) was a "clear and unmistakable" waiver of BCEA's right to a remedial order that the District remit all unpaid dues directly to BCEA. (*City of Milpitas* (2015) PERB Decision No. 2443-M at p. 20.) The County presented no evidence that the parties intended this agreement to apply in such a way to supersede PERB's remedial authority in the event the County unlawfully refused to remit dues and fees.

⁷ The MOU section 3.04, subdivision (a) defines "employee" as "any person entering into the bargaining unit or subsequently modified bargaining unit as mutually agreed upon by the Association and the County."

ORDER⁸

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the County of Butte (County) violated the Meyers-Milias-Brown Act (MMBA) (Act), Government Code section 3509, subdivision (b), and PERB Regulation 32603, subdivision (g). The County violated the Act by unreasonably enforcing its local rules 10.2, 10.5, and 10.8, and interfering with employee rights guaranteed by MMBA sections 3506 and 3506.5, subdivisions (b) and (d). Additionally, the County violated the Act by ceasing to deduct dues from employees in the newly formed Public Works and Skilled Trades unit during the pendency of the decertification election, and interfered with employee organization rights guaranteed by MMBA section 3503 and employee rights guaranteed by MMBA section 3506.

Pursuant to section 3509, subdivision (b), of the Government Code, it hereby is ORDERED that the County of Butte, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unreasonably enforcing a local rule, namely, rule 10.8, with respect to its application of unit modification in such a way as to justify prematurely withdrawing recognition from the recognized employee organization as well as its application of the Election Procedures contained in rules 10.2 and 10.5 in such a way as to justify requiring a recognized employee organization to “qualify” for a severance or decertification ballot.

⁸ Since neither party filed exceptions to the merits of the proposed decision, we incorporate the ALJ’s proposed order into the order of the Board, as modified to require an electronic posting of the Notice to Employees. (*City of Sacramento*, supra, PERB Decision No. 2351-M.)

TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO
EFFECTUATE THE POLICIES OF THE ACT:

1. Remit to BCEA dues for the period beginning May 24, 2014, through August 22, 2014, plus interest, in the amount of 7 percent per annum.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the General Unit and the Public Works and Skilled Trades Unit customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County of Butte, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means customarily used by the County to communicate with its employees.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the Butte County Employees Association, Local 1.

Members Banks and Gregersen joined in this Decision.



**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California**

After a hearing in Unfair Practice Case No. SA-CE-871-M, *Butte County Employees Association Local 1 v. County of Butte*, in which all parties had the right to participate, it has been found that the County of Butte violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Unreasonably enforcing a local rule, namely, rule 10.8, with respect to its application of unit modification in such a way as to justify prematurely withdrawing recognition from the recognized employee organization as well as its application of the Election Procedures contained in rules 10.2 and 10.5 in such a way as to justify requiring a recognized employee organization to “qualify” for a severance or decertification ballot.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Remit to BCEA dues for the period beginning May 24, 2014, through August 22, 2014, plus interest, in the amount of 7 percent per annum.

Dated: _____

COUNTY OF BUTTE

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.