

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



SERVICE EMPLOYEES INTERNATIONAL  
UNION LOCAL 1021,

Charging Party,

v.

CITY OF FREMONT,

Respondent.

Case No. SF-CE-1028-M

PERB Decision No. 2497-M

July 26, 2016

Appearances: Weinberg, Roger & Rosenfeld by Kerianne R. Steele, Attorney, for Service Employees International Union, Local 1021; Liebert Cassidy Whitmore by Richard C. Bolanos, Adrianna E. Guzman, and Matthew M. Nakano, Attorneys, and Debra S. Margolis, Assistant City Attorney, for City of Fremont; Messing, Adam & Jasmine by Jonathan Yank, Attorney, for City of Fremont Employee Association.

Before Winslow, Banks, and Gregersen, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Service Employees International Union Local 1021 (Local 1021) and by the City of Fremont (City) to a proposed decision by an administrative law judge (ALJ) pursuant to the Meyers-Milias-Brown Act (MMBA).<sup>1</sup> The complaint, as amended, alleged that the City violated MMBA sections 3502, 3503, 3505, and 3506.5, subdivisions (a), (b), (c) and (d), 3509, subdivision (b) and PERB Regulation 32603(a), (b), (c), (d) (f), and (g)<sup>2</sup> when it (1) improperly processed a decertification petition;

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<sup>1</sup> The MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

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

(2) refused to utilize a third-party neutral to conduct the decertification election; (3) improperly provided legal advice to the decertification petitioner, including advising him that a disaffiliation election was the appropriate procedure to remove Local 1021 as the exclusive representative; (4) failed to recognize Local 1021 as the exclusive representative and failing to meet and confer with Local 1021 and refusing to transmit dues and fees to Local 1021; and (5) demonstrated a preference for a competing employee organization by stating that Local 1021 was not the exclusive representative.

The ALJ dismissed the complaint based on her finding that the City had never recognized Local 1021 as the majority representative of the City's general bargaining unit. On this basis, the ALJ concluded that Local 1021 lacked standing to prosecute the allegations in the complaint. The ALJ also concluded that the City failed to establish its defense excusing its failure to transmit employee dues and fees to Local 1021, although she ultimately dismissed the alleged violation concerning dues transmittal based on her conclusion that Local 1021 lacked standing.

Local 1021 filed exceptions to the proposed decision and the City filed a cross-exception asserting error regarding the ALJ's rejection of its defense to the allegation that it failed to transmit employee dues and fees to Local 1021.

On or about July 7, 2016, the City and Local 1021 filed with the Board a Joint Request for Dismissal signed by counsel for both parties by which Local 1021 withdrew with prejudice its "appeal of the proposed decision" in Case No. SF-CE-1028-M and the City withdrew with prejudice its "appeal of the proposed decision" in the same case. The parties jointly requested that PERB dismiss the complaint in Case No. SF-CE-1028-M and that it "dismiss this case in its entirety and with prejudice."

The Board has discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (MMBA, § 3509, subd. (a); EERA,<sup>3</sup> § 3541.3, subds. (i) and (n); PERB Reg. 32320, subd. (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.)

The Board has a longstanding policy favoring voluntary settlement of disputes, such as that achieved by the parties in this case. (*Dry Creek Joint Elementary School District* (1980) PERB Order No. Ad-81a.) Based on the Board’s review of the parties’ joint request and their settlement agreement, and the entire record in this matter, the Board finds the request to be in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations.

#### ORDER

The Joint Request submitted by the parties in Case No. SF-CE-1028-M is GRANTED. The parties’ exceptions to the proposed decision are deemed withdrawn. The unfair practice complaint and underlying unfair practice charge are DISMISSED WITH PREJUDICE, and the proposed decision is hereby vacated.

Members Banks and Gregersen joined in this Decision.

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