STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PUBLIC EMPLOYEES UNION LOCAL 1, Charging Party, v. CITY OF YUBA CITY, Respondent.	Case No. SA-CE-919-M PERB Decision No. 2603-M December 12, 2018

Appearances: Leonard Carder, by Arthur Liou, Attorney, for Public Employees Union Local 1; Best, Best and Krieger, by Stacey N. Sheston and Ashley E. Ratliff, Attorneys, for City of Yuba City.

Before Banks and Winslow, Members.

DECISION[1]

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Public Employees Union Local 1 (Local 1) to a proposed decision of a PERB administrative law judge (ALJ). Local 1's exceptions challenge the ALJ's dismissal of the complaint's allegations that the City of Yuba City (City) violated the Meyers-Milias-Brown Act (MMBA)[2] by: (1) discriminating or retaliating against Local 1-represented employees when it imposed the terms of its last, best, and final offer (LBFO); and (2) failing to hold a public hearing regarding the parties' impasse before imposing its LBFO.[3] Having

[1] Pursuant to Government Code sections 3509, subdivision (a), and 3541.3, subdivision (k), the Board has delegated this case for decision to a two-member panel. Unless otherwise specified, all further statutory references are to the Government Code.

[2] The MMBA is codified at Government Code section 3500 et seq.

[3] Neither party has excepted to any other aspect of the proposed decision, in particular the ALJ's dismissal of the complaint's allegations that the City: (1) failed to participate in

reviewed the proposed decision and the entire record in light of Local 1's exceptions and the City's response, we deny the exceptions and affirm the dismissal of these allegations.

BACKGROUND

Local 1 has represented the City's Miscellaneous Unit since 2012, when it decertified the Yuba City Employees Association (Association).

In 2006, the City and the Association negotiated a memorandum of understanding (MOU) with an expiration date of June 30, 2011. The MOU required annual salary increases through 2010, a full employer-paid member contribution (EPMC) to each employee's CalPERS pension, and payment by the City of 80 percent of increases in health benefit costs, with employees paying the remaining 20 percent (80/20 split).

Beginning in 2009, with the City facing increasing deficits as a result of the economic recession, the City and the Association agreed to a number of cost-saving measures, including deferring and eventually eliminating the 2009 and 2010 salary increases, and implementing two furlough programs: (1) a "base" furlough, in which the City closed its offices every other Friday and reduced employee work hours and salaries by 5 percent; and (2) a "banked" furlough program, which reduced salaries by another 5 percent in exchange for banked leave time. The City and the Association also extended the MOU through June 2014.

After Local 1 decertified the Association in 2012, the City and Local 1 in September 2012 entered into a "Successor Agreement," which incorporated the MOU and all amendments and side letters previously agreed to by the Association.

---

impasse procedures in good faith; (2) imposed an unlawful pension contribution requirement; and (3) unilaterally changed its furlough policy. These allegations are not before the Board. (PERB Reg. 32300, subd. (c) [PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.].)

By early 2014, the City's finances had begun to improve, but the City still had a budget deficit and described its financial outlook as "far from rosy." In February 2014, the City held a meeting with the representatives of each of its seven bargaining units, all of whose contracts were set to expire in June 2014, to explain its financial condition.[4] The City also announced its three goals for negotiations: (1) end furloughs and restore City services, (2) eliminate the EPMC, (3) and balance the City's operating budget by 2018.

Local 1 and the City began negotiations in March 2014. The City's chief negotiator was Patrick Clark (Clark); Local 1's was Gary Stucky (Stucky). The City opened with a one-year proposal, which it also presented to its other units, which included: (1) requiring employees to pay 50 percent of normal pension cost, (2) eliminating the base furlough, (3) capping healthcare premiums at the current contribution rate, (4) eliminating the me-too clause, and (5) eliminating layoff protections. None of the bargaining units was interested in this proposal.

The City then submitted a two-year proposal to each bargaining unit. The economic terms were similar for each unit, including: (1) phasing in payment of pension contributions over two years, with employees eventually paying 50 percent of normal cost, (2) eliminating the base furlough the first year and the banked furlough the second year, and (3) splitting healthcare premiums 80/20.

As negotiations proceeded, the City's proposals continued to include one- and two-year options. Local 1 focused exclusively on the City's two-year proposal, which became "richer" as negotiations continued. Eventually, the City's two-year proposals included expiration dates that

[4] The City's seven bargaining units are: Police, Police Sergeants, Fire, Fire Managers, Miscellaneous, Mid-Managers, and First-Level Managers. Only the Police, Police Sergeants, Fire, and Miscellaneous Units are exclusively represented. Although not exclusively represented, the other units meet and confer with the City over terms and conditions of employment. The City unilaterally sets terms for its Executive Services Employees (department directors) and its city manager.

corresponded to dates of City Council meetings. Clark explained that some of his proposals were outside the City's goals, but he was willing to recommend that the City Council accept them to reach an agreement. Clark testified that he included the expiration dates so that he could give the City Council an idea whether the parties were close to a tentative agreement. The Local 1 bargaining team recognized that the dates correlated with City Council meetings. The parties discussed the effect of the expiration dates and understood that if a two-year proposal was not accepted by the expiration date, the City's position reverted back to its one-year proposal.

In March and April 2014, the City learned that its CalPERS contributions and workers' compensation premiums would increase more than anticipated. The City informed Local 1 of resulting changes to its budget projections. At some point, the City realized that these unanticipated costs would prevent it from achieving its goal of balancing the budget by 2018.

On May 5, 2014, Local 1 made its first proposal, which included a 12 percent salary increase. The City rejected this proposal, explaining that it could not accept a salary increase in light of its fiscal condition.

On July 15, 2014, Stucky appeared at a City Council meeting and asked the City to reconsider its bargaining position and agree to a fair contract. Several Local 1 members attended the City Council meeting to protest the City's bargaining position, and Local 1 and its members followed up with a publicity campaign aimed at garnering support for its position in negotiations.

On September 23, 2014, the City presented Local 1 with a revised two-year proposal, with the same key terms offered in its original proposal except for the addition of two floating holidays. The City also presented its one-year proposal, unchanged. After a short caucus, Local 1 declared impasse. Clark testified that he was surprised by the impasse declaration, but

he agreed that negotiations were deadlocked and joined in Local 1's declaration. At the time, the City's two-year proposal was still on the table, set to expire on October 6, 2014.

The City's local rules do not provide for mediation, but Stucky and Clark agreed it might be helpful. Clark prepared and sent to Stucky a chart identifying the disputed terms under both the one-year and two-year proposals. The parties met with a mediator on two dates in November, but did not reach agreement.

On February 10 and 12, 2015, Local 1 and the City participated in a factfinding hearing. During the hearing, Clark identified the City's one-year proposal as its LBFO. He stated the one-year option was the only proposal that remained on the table because the two-year proposal had expired on October 6, 2014. Stucky testified that the factfinding hearing was the first time the City had identified the one-year proposal as its LBFO.

The factfinding report issued on March 10, 2015, finding, among other things, that the City had the financial ability to end furloughs without requiring employees to contribute toward their pensions. The report was provided to the City Council, and copies were made available to the public at City Hall on the City's website. Neither Local 1 nor the City requested to meet to discuss the report.

On March 10, 2015, Stucky mailed a proposal for a two-year agreement to Clark and City Manager Steve Kroeger. The proposal included most of the terms in the City's previous two-year proposal to Local 1, but with the addition of a $1,000 lump sum payment and a 7 percent salary increase.

Clark informed Stucky that the City had rejected Local 1's proposal because it could not accept any salary increase.

On March 31, 2015, Stucky wrote to City Human Resources Director Natalie Springer (Springer), asserting that certain provisions of the City's local rules, which stated that employees were subject to discipline for striking, were unlawful. He requested that the City immediately strike these provisions from the local rules. Stucky also reported that managers were telling employees they could be fired for participating in a strike. Springer responded that the local rules were outdated, and acknowledged that the City needed to making revisions. Springer also stated she would investigate any improper threats brought to her attention, and that the City would issue a communication to "clarify any misunderstandings about strike activity."

On April 24, 2015, Stucky sent a letter informing Clark that the Local 1 membership had voted the previous day to authorize a strike, but had not yet set a strike date. Stucky also complained that the City had not issued an LBFO at the table but had identified its pre-impasse one-year proposal as its LBFO during factfinding proceedings. Stucky closed by requesting a written, detailed LBFO that Local 1 could present to its members.

On April 28, 2015, Clark responded that, as the City had previously asserted during mediation and factfinding, the one-year proposal submitted on September 23, 2014 was the only active proposal, and was therefore the City's LBFO.

On May 4, 2015, Stucky sought further clarification of the City's LBFO, while disputing that the one-year proposal had been discussed during mediation or factfinding.

In early May 2015, the City issued the agenda for the May 19 City Council meeting. The agenda included a closed session followed by a "[r]egular [m]eeting," at which the public was "welcome and encouraged to participate," with "[p]ublic comment . . . taken on items listed on the agenda when they are called." Item 13 on the agenda for the regular meeting was titled "Local 1 Imposition," and included a summary of the staff recommendation that the Council

"[a]dopt a Resolution implementing the City's Last, Best, and Final Offer to Public Employees' Union, Local 1 effective June 13, 2015." The staff report attached to the agenda described the parties' bargaining and impasse history, including mediation and factfinding, and included the terms of the City's LBFO. It also estimated the fiscal impact of imposing the LBFO as a savings to the City of $67,560 annually.

Stucky regularly received City Council meeting agendas, and reviewed attached materials on the City's website. He testified that he had sufficient time to review the agenda materials for the May 19 meeting, discuss them with Local 1 leaders, and prepare for the Council meeting.

On May 14, 2015, Local 1 provided the City with notice of its intent to request injunctive relief from PERB concerning the local rules prohibiting employees from striking.[5]

Before the May 19, 2015 City Council meeting, Local 1 members participated in informational picketing near City Hall. During the meeting, Springer presented the Local 1 imposition agenda item, describing the parties' negotiations and impasse proceedings, and summarizing the proposal to implement the LBFO. The Mayor then "open[ed] up the public hearing" and invited public comment. Stucky spoke and opposed implementation of the proposed terms. He asked the Council to either send the parties back to the bargaining table or impose terms similar to the two-year agreements reached with other bargaining units. The Mayor asked Stucky if he was making a proposal. Stucky replied that he did not have authority from his membership to make such a proposal, and that he did not believe in negotiating in public. The Mayor then closed the public comment period, and the City Council

[5] After discussions with Local 1, the City on May 22, 2015, notified Miscellaneous Unit employees that no disciplinary action would be taken for participating in a protected strike or other concerted activities. Local 1 withdrew its notice of intent to seek injunctive relief.

voted to adopt a resolution implementing the LBFO terms effective June 13, 2015. The Council also directed staff to return to the bargaining table with Local 1 as soon as possible.

Resolution of Bargaining with Other Unites

Before reaching impasse with Local 1, the City reached agreement with three of its other units, as follows. On July 15, 2014, the City Council approved an agreement with the Mid-Managers that: (1) eliminated the base furlough immediately, and the banked furlough in July 2015; (2) phased out the EPMC over two years; (3) split total healthcare premiums 80/20; and (4) provided two floating holidays. On September 16, 2014, the City Council approved the same terms for the Executive Services Employees, and approved two-year agreements for the Police and Police Sergeants, with the same terms on furloughs, EPMC, and healthcare premiums, but with the addition of a 3.5 percent salary increase to address recruitment and retention issues and a $1,000 lump sum payment to each employee.

Shortly after reaching impasse with Local 1, the City Council on November 4, 2014 approved a two-year agreement with the First-Level Managers. The key terms mirrored those agreed to by the Mid-Managers, except for the addition of a $1,000 lump sum payment.

On January 20, 2015, the City Council imposed terms on the Fire Unit, which: (1) eliminated furloughs; (2) eliminated EPMC (thus requiring employees to pay the full member contribution of 9 percent); (3) capped healthcare benefits at the 2014 contribution level; and (4) reduced staffing from three-person to two-person stations. The City estimated that these terms would save the City $810,000 per year. Before the City imposed terms, the Fire Unit did not request factfinding or threaten to strike,[6] but Fire Unit members engaged in a community

[6] Employees in the Fire Unit were likely prohibited from striking. (Lab. Code, § 1962.)

outreach campaign to seek public support for its bargaining position, using social media, "walking the City," and publicizing a "no confidence" vote in the Fire Chief.

On March 3, 2015, the City Council approved a two-year agreement with the Fire Managers, with the same terms agreed to by the First-Level Managers.

The City estimated that its two-year agreements with the various bargaining units would increase its costs by $1.7 million over two years.

Resumption of Negotiations with Local 1

After the City imposed terms on Local 1, the parties resumed negotiations in August 2015 and reached agreement on a two-year MOU effective from October 20, 2015 through June 30, 2017. In addition to ending all furloughs, the terms included: (1) a 2 percent salary increase; (2) a $1,500 lump sum payment; (3) elimination of EPMC; (4) an 80/20 split of total healthcare premiums; and (5) two floating holidays. Certain classifications received call-out pay, 12-hour shift schedules, and certification pay for maintaining required certificates.

Around the same time, the City sought to extend the contracts of its other bargaining units by one year. The City offered those units a 2 percent salary increase and a $1,500 lump sum payment. The Mid-Managers Unit received an additional $1,000 lump sum payment, which it had not received in July 2014 when it was the first group to agree to a two-year contract. The City Council resolution approving these extension agreements recognized a disparity among the groups that had previously reached agreement with the City, and stated its intent that "all bargaining units that negotiated a . . . contract in 2014" were "to receive a $1000 nonPERSable stipend."

DISCUSSION

I. Discrimination

The complaint alleges that the City discriminated against Local 1-represented employees for various protected activities "by implementing a last, best, and final offer that included terms and conditions of employment that were worse than terms and conditions of employment agreed to by, or imposed upon, other employee groups and bargaining units." The ALJ analyzed this allegation under *Campbell Municipal Employees Association v. City of Campbell* (1982) 131 Cal.App.3d 416 (*Campbell*), and found it lacking. Local 1 argues that the ALJ reached the wrong result. We disagree.

Campbell

As we recently explained, "a prima facie case is established under *Campbell* by 'discrimination in its simplest form,' i.e., conduct that is facially or inherently discriminatory, such that the employer's unlawful motive can be inferred *without specific evidence*." (*Los Angeles County Superior Court* (2018) PERB Decision No. 2566-C, p. 14 (*Los Angeles Superior Court*), emphasis added.) If the employer has engaged in this type of conduct, it bears the burden of justifying its conduct by coming forward with a legitimate business justification. (*Campbell*, *supra*, 131 Cal.App.3d 416, 424.) On the other hand, if the employer's conduct is not facially or inherently discriminatory, the charging party must prove the employer's unlawful motive under *Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*). (*Los Angeles Superior Court*, *supra*, at p. 17.)

Common examples of facially or inherently discriminatory conduct include: (1) providing different pay, benefits, or other working conditions based explicitly on union membership or other protected activity; and (2) changing policies in response to protected

activity, where the operative comparison is not between two different groups of employees, but between an employer's policies before and after the exercise of protected rights. (*Los Angeles Superior Court*, *supra*, PERB Decision No. 2566-C, pp. 14-15.)

Campbell, *supra*, 131 Cal.App.3d 416, illustrates both types of discriminatory treatment. In that case, the employer and the union had reached agreement on most issues for an MOU, including a retroactive date for salary and benefit increases. Having reached impasse over two other issues, the parties engaged in impasse resolution procedures, but were unable to resolve their dispute. The employer then imposed terms, which included all of the parties' tentative agreements—except that the salary increase was retroactive to a less favorable date than the agreed-upon date, and less favorable than the date provided to other unions that had not gone to impasse. These facts led the court to draw a "strong" inference "that the motivation for that discrimination was to 'punish' [the union] and its members for utilizing [the] impasse procedure." (*Id.* at p. 424.)

Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683 (*County of Los Angeles*) reached a similar result. There, the employer had an acknowledged practice of negotiating fringe benefits with a coalition of unions, and implementing any changes to those benefits as to all of the participating unions at the same time. Yet it departed from that practice and implemented the fringe benefit changes only for those unions that had already reached a separate agreement on wages. The court concluded that the employer's intention was to punish the unions who had not yet reached a wage agreement. (*Id.* at p. 689.)

But not all differences in treatment give rise to an inference of discrimination under *Campbell*. In *Los Angeles Superior Court*, *supra*, PERB Decision No. 2566-C, for instance,

we noted that preferential treatment in favor of a group of represented employees, at the expense of unrepresented employees, would not necessarily be inherently discriminatory. This was because "[i]t cannot be assumed that an employer that treats represented employees better than unrepresented employees does so to punish unrepresented employees and encourage them to organize. The more logical inference is that the employer is yielding to the bargaining power of its represented employees." (*Los Angeles Superior Court*, *supra*, PERB Decision No. 2566-C, p. 16.)

A similar concern applies to claims of disparate treatment between groups of represented employees. Though all may be represented, differences in bargaining power and bargaining strategy are likely explanations for different results at the bargaining table. And while the Board has recognized that an employer has a legitimate interest in maintaining parity or equity across its bargaining units (*Anaheim Union High School District* (2016) PERB Decision No. 2504, p. 14), it has never held that our statutes *require* parity. To the contrary, we recently noted, "an employer comes 'perilously close' to bad faith when it insists that it will not under any circumstances agree to different terms for different employee groups." (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 8, fn. 10.) Thus, we must tread carefully before inferring that different treatment of different represented groups is facially or inherently discriminatory.

The facts of this case give us no cause to infer, without more, that the City intended to discriminate against the Miscellaneous Unit on the basis of protected activity. The City made consistent efforts to treat its bargaining units the same. To most of them, including Local 1, it

presented the same one- and two-year contract proposals.[7] Critically, it made those proposals to Local 1 and the other units *before* Local 1 went to the City Council to protest the City's bargaining positions, declared impasse, participated in mediation and factfinding, complained about the City's no-strike regulation, gave notice of intent to seek injunctive relief, or threatened to strike. And the only units that obtained the more favorable two-year terms were the units that agreed to them. Thus, rather than discrimination for protected activity, the most obvious explanation for the City's disparate treatment of the Miscellaneous Unit is Local 1's decision not to agree to the more favorable two-year terms.

Local 1 complains that the City failed to specify whether its LBFO was its one-year or its two-year proposal, thereby leaving unclear which proposal the City would ultimately seek to impose. We are skeptical that Local 1 could have reasonably believed that the City would impose the terms of its two-year proposal if the parties failed to reach agreement. The City's two-year proposal, unlike its one-year proposal, had an express expiration date, of which Local 1 was well aware, and which had lapsed before factfinding. Moreover, there is no

[7] The only units that received different proposals were Police, Police Sergeants, and Fire. The Police and Police Sergeants were the only units to receive wage increases, which were justified on recruitment and retention grounds, and Local 1 does not claim that it was discriminatory for the City to withhold those wage increases from Local 1.

As for the Fire Unit, the record is less than clear, but suggests that the City's proposals to the Fire Unit did not mirror its proposals to the other units, because the terms imposed on the Fire Unit were different from those imposed on the Miscellaneous Unit. The ALJ compared the City's treatment of the Miscellaneous Unit with its treatment of the Fire Unit, and determined that because the Miscellaneous Unit fared better, there was insufficient evidence of discrimination under *Campbell*, *supra*, 131 Cal.App.3d 416. In its exceptions, Local 1 argues that this comparison is not dispositive because it could be the case that the City also discriminated against the Fire Unit, which engaged in some protected activity, short of requesting factfinding or threatening to strike. Rather, Local 1 maintains, the relevant comparison is between the Miscellaneous Unit and the units that reached two-year agreements. We agree, and therefore need not decide whether the Miscellaneous Unit or the Firefighters Unit was treated less favorably.

requirement that an employer impose its LBFO at all (*County of Tulare* (2015) PERB Decision No. 2461-M, p. 17; *City of Clovis* (2009) PERB Decision No. 2074-M, p. 5, fn. 5), meaning that even if the two-year proposal had been the City's LBFO, the City could have chosen to maintain the status quo rather than give the Miscellaneous Unit the benefit of the two-year proposal Local 1 had rejected (a result that still would have been discriminatory according to Local 1's theory).

But even if Local 1's uncertainty about the City's LBFO had been reasonable, Local 1 had every opportunity to clear up that confusion at the bargaining table before declaring impasse. And, in any event, Local 1's confusion concerning the City's pre-impasse position does not lead us to infer that the City decided to treat Local 1 less favorably only after it engaged in protected conduct.

In other words, *Campbell*, *supra*, 131 Cal.App.3d 416, and *County of Los Angeles*, *supra*, 168 Cal.App.3d 683, on which Local 1 relies, are distinguishable. In both cases, there was no question that the employer adopted a position that was less favorable to the union after the protected activity occurred.

We would reach a different conclusion if the City, after Local 1 invoked impasse procedures, had refused to agree to the type of two-year agreement most of the other units reached. That never happened because Local 1 never expressed a willingness to agree to those terms at any time before imposition. After factfinding, Local 1 made a two-year proposal that included, in addition to the terms agreed to by most of the other units, a 7 percent wage increase to offset the increased pension contributions. And during the City Council hearing, Local 1 argued that the Council should impose the City's two-year proposal, but expressly declined to present that as an offer.

Because Local 1 rejected the City's more favorable two-year proposal of its own volition, the City's refusal to impose the terms of that proposal is not inherently or facially discriminatory. (Cf. *County of Tulare*, *supra*, PERB Decision No. 2461-M, p. 16 ["Having passed up an opportunity to agree to 'an objectively beneficial' proposal, [the union] cannot now complain that it was surprised by the [employer's] entirely reasonable decision not to impose something that [the union] repeatedly said it was not interested in"]; see also *American Ship Bldg. Co. v. NLRB* (1965) 380 U.S. 300, 313 ["there is nothing in the [National Labor Relations] Act which gives employees the right to insist on their contract demands, free from the sort of economic disadvantage which frequently attends bargaining disputes"].) Local 1 therefore failed to state a prima facie case under *Campbell*, *supra*, 131 Cal.App.3d 416.

<u>*Novato*</u>

Although Local 1 argues its case exclusively under the *Campbell* framework, it points to what it claims is evidence of the City's unlawful motive. We therefore consider whether Local 1 has established a prima facie case under *Novato*, *supra*, PERB Decision No. 210. (*Los Angeles Superior Court*, *supra*, PERB Decision No. 2566-C, p. 17.) To do so, Local 1 must prove that: (1) the Miscellaneous Unit exercised rights under the MMBA; (2) the City had knowledge of the exercise of those rights; (3) the City took adverse action against the Miscellaneous Unit; and (4) the City took the adverse action *because of* the exercise of those rights. (*Novato*, *supra*, at pp. 6-8.) The first three of these elements are not subject to dispute, so we focus on the fourth, unlawful motive.

Unlawful motive may be proven "by either direct or circumstantial evidence, or a combination of both." (*Omnitrans* (2010) PERB Decision No. 2121-M, p. 10.) When relying on circumstantial evidence, the charging party must prove: (1) close timing between the

protected activity and the adverse action; and (2) some other facts indicating an unlawful motive, such as disparate treatment, departure from established procedures, a cursory investigation, or providing either no explanation for the action or multiple, contradictory explanations. (*Monterey Peninsula Unified School District* (2014) PERB Decision No. 2381, pp. 29-30.)

The facts establish close timing between Local 1's protected conduct and imposition of the City's LBFO, but no other evidence of unlawful motive. Local 1 argues there is such evidence in the inconsistency between the terms imposed on Local 1 and "the City's stated intent of restoring furloughed services." We disagree. First, the City *did* restore some furloughed services when it imposed its LBFO on the Miscellaneous Unit. It ended the base furlough, which accounted for half of the furloughs. Second, even the City's two-year proposal did not call for an immediate end to furloughs; instead, it would have phased them out over two years. Third, even if there was some inconsistency between the imposed terms and the City's goal of ending furloughs, that inconsistency preceded Local 1's protected activity, when the City first made its one-year proposal calling for only a partial end to furloughs. The pre-existing inconsistency cannot supply evidence of unlawful motive. (See *Jurupa Unified School District* (2015) PERB Decision No. 2420, p. 17 [employer's alleged violations of Education Code, which occurred both before and after employee engaged in protected activity did not indicate unlawful animus].)

Local 1 also claims there is evidence of unlawful motive in the City's decision to grant the Mid-Managers unit a $1,000 lump sum payment in 2015, as part of an agreement to extend its MOU for an additional year. As the first group to reach agreement on a successor MOU, the Mid-Managers Unit did not receive that payment. In granting this payment, the City Council

stated that its intent was that "all bargaining units that negotiated a . . . contract in 2014" were "to receive a $1000 nonPERSable stipend." Local 1 argues that this statement shows an intention to reward the units that settled and punish the Miscellaneous Unit for declaring impasse, going to factfinding, and threatening to strike. We view it differently. On its face, the resolution does not reward the Mid-Managers Unit for refraining from declaring impasse and going to factfinding. Rather, it achieves parity among the units that successfully negotiated a successor agreement in that round of bargaining, something Local 1 was unable to do. There is no evidence that Local 1 could not have obtained the $1,000 lump sum if it had successfully reached agreement after going through factfinding and threatening to strike.[8] Therefore, we conclude that the City's decision to grant the lump sum to the Mid-Managers Unit is not evidence of unlawful motive.

Lacking evidence of unlawful motive, Local 1 has failed to prove a prima facie case of discrimination. We therefore affirm the dismissal of the complaint's discrimination allegation.

II. Failure to Hold a Public Hearing

Local 1 also excepts to the ALJ's dismissal of the allegation that the City failed to hold a public hearing regarding its impasse with Local 1, as required by MMBA section 3505.7.

MMBA section 3505.7 provides, in relevant part, that after completing any applicable impasse procedures, and no earlier than 10 days after the parties have received the factfinding report, "a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding." We have previously interpreted section 3505.7's bar on imposing a memorandum of understanding (*City of San Ramon*, *supra*, PERB Decision

[8] Despite the resolution's reference to units that negotiated a contract in "2014," the City Council approved terms including the $1,000 stipend on March 3, 2015, for the Fire Managers Unit.

No. 2571-M, pp. 13-14; *Fresno County In-Home Supportive Services Public Authority* (2015) PERB Decision No. 2418-M, pp. 21-22, fn. 10; *City of Santa Rosa* (2013) PERB Decision No. 2308-M, p. 5), and we have determined that section 3505.7 and the other MMBA provisions concerning factfinding impose a duty to consider the factfinding report in good faith (*City of Davis* (2018) PERB Decision No. 2582-M, pp. 26-27). We have not yet considered the public hearing requirement as a per se or standalone violation of the statute.

Local 1 argues that the City violated section 3505.7 by identifying the agenda item on the City Council's May 19, 2015 meeting as "Local 1 Imposition," rather than as a public hearing regarding the impasse, and by focusing on the need to impose terms rather than on the issues in dispute between the parties. We disagree. As the ALJ found, the agenda and staff report considered by the City Council clearly described the parties' bargaining history and their impasse, and it notified the public that the parties had reached impasse and exhausted all applicable impasse procedures. The ALJ also found that Stucky admitted that he had received the agenda, reviewed the materials, discussed the matter with Local 1 leaders, and had an opportunity to prepare for his presentation at the public meeting. Moreover, the Local 1 Imposition item appeared on the public portion of the meeting agenda, which welcomed public participation and specified that public comment would be received when the agenda items were called. Finally, during the City Council meeting, the Mayor "open[ed] up the public hearing," after the City staff presentation, and Stucky addressed the City Council on the terms proposed to be implemented and on the parties' negotiations. In substance, this was a public hearing regarding the impasse.

Local 1 also argues that the City did not *intend* to hold a public hearing regarding the impasse because: (1) the "Local 1 Imposition" item did not appear on the agenda where public

hearings are required to appear per the City ordinance governing City Council meetings; and (2) the City failed to provide adequate notice of a public hearing concerning the impasse under the Ralph M. Brown Act (Brown Act).[9] Local 1 recognizes, of course, that the Board does not enforce the City ordinance,[10] or the Brown Act, and the City's compliance with those laws is therefore not our concern. For purposes of interpreting MMBA section 3505.7, it is enough to conclude—as we do—that the City adequately informed the public that the City Council would be considering imposition of the City's LBFO, and gave an opportunity for public comment. Neither the City's failure to specify that an item on its public meeting agenda was a "public hearing," nor its failure to use the word "impasse" on the agenda is sufficient to establish a violation of section 3505.7's public hearing requirement. (Cf. *City of Salina*s (2018) PERB Order No. Ad-457-M, p. 5.)

While the legislative history of MMBA section 3505.7, as amended by Assembly Bill 646 does not reveal the extent of the "public hearing" required, it is safe to assume that any perfunctory "going through the motions" to hasten imposition on an LBFO is not what the legislature had in mind. At a minimum, the employer must provide adequate notice to the public that it intends to consider imposing terms and conditions on employees, and to allow public comment concerning the proposed imposition. Those minimums were met here.[11]

---

[9] The Brown Act is codified at section 54950 et seq.

[10] The ordinance in question is a general one applying to all City Council meetings, and is not a rule or regulation for the administration of employer-employee relations adopted in accordance with MMBA section 3507.

[11] Even where those minimums are met, the manner in which the public hearing proceeds, statements made by the employer's representatives and governing body during the hearing, and the decision ultimately imposed may be evidence of whether the employer has acted with the requisite good faith during negotiations and impasse procedures. (See *City of Davis*, *supra*, PERB Decision No. 2582-M, pp. 26-27.) Here, however, Local 1 has not

Because the City satisfied section 3505.7's public hearing requirement, we affirm the ALJ's dismissal of that allegation.

ORDER

The complaint and unfair practice charge in Case No. SA-CE-919-M are hereby DISMISSED.

Member Banks joined in this Decision.

excepted to the ALJ's dismissal of the allegation that the City failed to participate in good faith in impasse procedures, nor does it otherwise argue that the City's conduct of the public hearing evidences bad faith.