STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS, Charging Party, v. COUNTY OF ORANGE, Respondent.	Case No. LA-CE-1108-M PERB Decision No. 2663-M August 20, 2019

Appearances: Law Office of Olins & Chaikin, by Adam E. Chaikin, Attorney, for the Association of Orange County Deputy Sheriffs; Laurie A. Shade, Senior Deputy, for the County of Orange.

Before Banks, Krantz, and Paulson, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Association of Orange County Deputy Sheriffs (Association) to a proposed decision of administrative law judge (ALJ). The Association excepts to the ALJ's conclusion that the County of Orange (County) did not did violate the Meyers-Milias-Brown Act (MMBA)[1] when it altered merit system rules concerning promotional practices without affording the Association notice and an opportunity to meet and confer.

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

The Board itself has reviewed the parties' briefs and the entire record in this matter in light of applicable law. Based on that review, we reverse the proposed decision for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

The parties do not dispute the relevant facts. The Association is the exclusive employee organization representing the County's Peace Officer Unit and Supervising Peace Officer Unit. These units contain the classifications Deputy Sheriff Trainee, Deputy Sheriff I, Deputy Sheriff II, Investigator, Investigator I, District Attorney Investigator, Investigator-Polygraph Operator, Supervising Attorney's Investigator, and Sergeant.

Since 1976, the County has operated a merit system governed by the Merit Selection Rules (MSR). On September 10, 2015, the County's Human Resources Services revised the MSR and renamed them its Recruitment Rules and Policies (RRP), without any action by the Board of Supervisors. Both sets of rules cover the typical sequential phases of a merit system: recruitment and announcement of new hire and promotional opportunities, the application process, testing, composition of lists of candidates eligible for positions, the process for department heads to request referral of eligible candidates for consideration, appointment to positions, and appeals.

Relevant here, both sets of rules designate three different pools for recruitment: Agency/Department, Countywide, and Open, which is open to applicants from the public. They both lay out a process for Human Resources to screen applicants for minimum qualifications before advancing them to the testing/competitive assessment phase in which candidates seek to be placed on an eligible list, grouped by score. They also contain rules for "special referral qualifications," which allow Human Resources to refer qualifying candidates

for potential appointment outside the normal process. This includes existing employees transferring to lateral positions and transfers from other jurisdictions.

Both sets of rules contemplate deviations based on a memorandum of understanding. They exempt "positions which - as required by contractual agreements . . . must be filled in a manner other than through the normal selection and referral procedures described in these Rules." They also specify that when Human Resources refers eligible candidates for consideration by a department, it must take into account rules for reemployment of laid off employees "as defined in the applicable Memorandum of Understanding."

Under both the MSR and the RRP, the Sheriff's Department can recruit for any of the classifications represented by the Association using an Open Recruitment, although Deputy Sheriff II, Investigator positions, and Sergeant are typically Agency/Departmental promotions. Deputy Sheriff Trainees typically promote to Deputy Sheriff I upon completing academy training and Deputy Sheriff Is can make a lateral move in during Open recruitments.

Four specific changes between the MSR and the RRP are at issue. First, MSR article III, section 2 (Qualification of Applicants) states applicants must meet "minimum qualifications" to be considered for a position. But RRP article III, section 2 (Qualification of Applicants) states that in addition to meeting minimum qualifications,

> depending on factors such as the business needs of the County, number of positions anticipated to be filled, and the volume and quality of the applicant pool, only those applicants who appear to possess the *desirable* qualifications may be considered and advanced to the next step in the competitive process.

(Emphasis added.) The parties do not dispute that *desirable* qualifications are different than, and in addition to, *minimum* qualifications.

Second, MSR article IV, section 3.B ("Assessment Requirements") states at subsection 1 that "[c]andidates must meet minimum qualifications in order to compete in a recruitment and any specific parameters noted in the job announcement." But, RRP article IV, section 2.B.1, includes the above language and then states that, "[d]epending on the needs of the County, only applicants who appear to meet or exceed *desirable* or *ideal* qualifications may be invited to participate in assessments." (Emphasis added.)

Third, MSR article IV, section 2.C states open recruitments are "open to any person possessing the applicable minimum qualifications." RRP article II, section 4.C repeats the language that open recruitments are "[o]pen to any person possessing the applicable minimum qualifications[,]" but adds, "however, the County may limit applications to Inter-Jurisdictional Transfer applicants including but not limited to Deputy Sheriff or Clinical Social Worker laterals from other counties."

Fourth, MSR article IV, section 3.B.4 states, "A person may not rate, score, or otherwise influence his or her own assessment evaluation or that of a relative as defined in the County's Employment of Relatives Policy." RRP article IV, section 2.B.4 contains the same language but further states, "[w]henever practicable, panel members who have a close personal relationship with a candidate should be recused and replaced with an alternate rater. On a three person panel, the 'absent rater formula' may be used."

The parties do not dispute that the County revised the MSR without meeting and conferring with the Association over the decision to do so or the effects thereof. The Association learned of the revisions after-the-fact on December 21, 2015. On March 2, 2016,[2] the Association sent the County a letter identifying several changes it considered subject to

[2] All subsequent dates are in 2016 unless otherwise identified.

bargaining and requested the County return to the status quo by re-instituting the former MSR. On April 5, the County responded by arguing that none of the changes concerned mandatory subjects of bargaining and declining to rescind the new rules.

On June 17, the Association filed an Unfair Practice Charge. The Office of General Counsel issued a Complaint against the County alleging it violated MMBA sections 3503, 3505, 3506, 3506.5(a), 3506.5(c) and committed an unfair practice under section 3509(b) and PERB Regulation 32603(a)-(c) when it unilaterally adopted the changes to the MSR/RRP. By the date of the hearing, the issues had narrowed to the aforementioned four specific changes.

The proposed decision noted that the only issue in dispute was whether the changes at issue fell within the scope of representation. To resolve this issue, the ALJ applied the three-part test from *Claremont Police Officers Association v. City of Claremont* (2006) 39 Cal.4th 623 (*Claremont*) in light of the Board's interpretation of *Claremont* in *City of Alhambra* (2010) PERB Decision No. 2139-M (*Alhambra*). In *Alhambra*, the Board held changes to job qualifications were sometimes outside the scope of representation. (*Alhambra*, *supra*, PERB Decision No. 2139-M, p. 4.) The ALJ concluded the changes to threshold qualification levels at issue here were likewise outside the scope of representation. As for the changes concerning the "absent rater formula" and interjurisdictional transfers, the ALJ again turned to the *Claremont* test, finding that the Association did not introduce evidence showing that the changes had a significant and adverse impact on employees' terms and conditions of employment, and concluding that, in any event, the determination of minimum qualifications has an effect on public services and is a fundamental managerial or policy decision. As to effects bargaining, the ALJ concluded the Association failed to state a claim because it did not demand effects

bargaining after it learned of the unilateral implementation, and that, in any event, the only complained of effects were speculative.

DISCUSSION

The Decision to Change the MSR

To establish a prima facie case for an unlawful unilateral change, a charging party must show that: (1) the employer took action to change existing policy; (2) the policy change concerned a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; and (4) the change has a generalized effect or continuing impact on terms and conditions of employment. (*County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13.)

The dispute in this case centers on whether the changes at issue concerned a matter within the scope of representation. Under the MMBA, the scope of representation includes all matters relating to employment conditions and employer-employee relations, including wages, hours, and other terms and conditions of employment. (MMBA, § 3504.) Fundamental managerial decisions regarding the merits, necessity, or organization of public services, however, are outside the scope of representation and therefore not subject to the MMBA's meet-and-confer requirement. (*Ibid*.)

In *International Assn. of Fire Fighters, Local 188, AFL-CIO v. PERB* (2011) 51 Cal.4th 259, 272-273 (*Richmond Firefighters*), the Supreme Court clarified the three-part *Claremont* test which the ALJ applied. In a 2018 decision, PERB explained this clarification and disavowed *Alhambra*'s analytic framework, as it misapplied *Claremont*. (*County of Orange* (2018) PERB Decision No. 2594-M, pp. 17-20 [discussing *Claremont* and *Richmond Firefighters*, and disavowing *Alhambra*'s description of the applicable test].)

Under the clarified test, there are three categories of managerial decisions: (1) "decisions that 'have only an indirect and attenuated impact on the employment relationship' and thus are not mandatory subjects of bargaining," such as advertising, product design, and financing; (2) "decisions directly defining the employment relationship, such as wages, workplace rules, and the order of succession of layoffs and recalls," which are "always mandatory subjects of bargaining" and (3) "decisions that directly affect employment, such as eliminating jobs, but nonetheless may not be mandatory subjects of bargaining because they involve 'a change in the scope and direction of the enterprise' or, in other words, the employer's 'retained freedom to manage its affairs unrelated to employment.'" (*Richmond Firefighters*, *supra,* 51 Cal.4th at pp. 272-273.) If the decision at issue is in the first or second category, that is the end of the inquiry, and a decision in the second category is bargainable irrespective of whether it has a significant and adverse consequence on employees. (*County of Orange*, *supra*, PERB Decision No. 2594-M, p. 19 [noting, for instance, that even a wage increase, which benefits employees, is bargainable].)[3] If the matter is in the third category, we apply a balancing test, under which bargaining is required only if "the benefit, for labor-management relations and the collective-bargaining process, outweighs the burden placed on the conduct of the business." (*County of Orange*, *supra,* PERB Decision No. 2594-M, p. 18, quoting *Richmond Firefighters*, *supra*, at p. 273.)

Changes to promotional procedures and criteria usually fall in the second *Richmond Firefighters* category, because they directly define the employment relationship. For example,

[3] See Zerger, ed. (2nd ed. 2019) *California Public Sector Labor Relations* § 8.02[2] ["By explaining that decisions directly defining the employment relationship are always mandatory subjects of bargaining, *Richmond Firefighters* clarifies *Claremont* and instructs that PERB and the courts need not ask whether such a decision has a 'significant and adverse effect' on wages, hours, or other terms and conditions of employment, nor balance that effect against the employer's need for unencumbered decisionmaking."]

in a landmark case, the Supreme Court held that a union's proposals about vacancies and promotions were mandatory subjects of bargaining because they concerned job security and opportunities for advancement and therefore related directly to the terms and conditions of the represented employees' employment. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 618 (*Vallejo*).) Following *Vallejo*, the Court of Appeal stressed the importance of promotional opportunities to current employees in finding that promotional procedures are an important "condition of employment." (*International Association of Fire Fighters Union v. City of Pleasanton* (1976) 56 Cal.App.3d 959, 971 (*Pleasanton*).) The Board, for its part, has cited to *Vallejo* and *Pleasanton* in noting that promotional criteria and procedures fall within the scope of representation. (*City of Riverside* (2009) PERB Decision No. 2027-M, p. 14 (*Riverside*).)

Prior to *Alhambra*, these precedents left it well settled that promotional opportunities fall within the scope of representation, except in very unusual circumstances. In *Alum Rock Union Elementary School District* (1983) PERB Decision No. 322, p. 22 (*Alum Rock*), for instance, PERB noted that promotional criteria—including the qualifications for a promotive position—are bargainable unless management was rewriting such qualifications either with no substantive changes whatsoever or merely to comply with an external legal change such as passage of a new federal anti-discrimination law. Along the same lines, in *San Francisco Fire Fighters Local 798 v. Bd. of Supervisors* (1992) 3 Cal.App.4th 1482, 1487, the employer's longstanding practice was to submit "immediate replacement" requests whenever civil service eligibility lists were about to expire, permitting those on the lists to fill vacancies immediately. But a federal court issued a consent decree designed to racially integrate management positions. The decree required a series of court-supervised promotional examinations and the

last promotional list established under the old rules was about to expire, with subsequent lists to be the product of the court-supervised process. (*Id.* at p. 1488.) Faced with "a well-grounded fear that droves of senior captains would retire at the last minute to benefit the nonminority candidates," the employer unilaterally decided to limit the use of immediate replacement requests. (*Id*. at p. 1494.) The court weighed the evidence and found the employer's decision was a fundamental policy decision outside the scope of representation, mainly because the federal consent decree severely constricted the employer and made the particular decision at issue not amenable to collective bargaining. (*Ibid*.)

No similarly unusual circumstances are present here. The County made the changes at issue in response to internal confusion about promotional practices, and the County characterized the changes as minimal and administrative. But the changes nonetheless altered Association members' promotional opportunities. The first three disputed changes alter the promotional procedures or criteria by permitting the County to summarily exclude some candidates who nonetheless meet the minimum qualifications to compete for a position. It is plain why such a change implicates the promotional opportunities of those thus excluded. The fourth change introduced a new formula for rating candidates for promotion, likewise altering promotional opportunities.

The County's desire for a uniform recruitment policy covering all departments does not create an unusual circumstance. The RRP itself already accommodates differences based on collective bargaining and the County offered no reason why it could not similarly adapt the RRP based on bargaining with the Association. Moreover, by specifically mentioning the classifications Deputy Sheriff and Clinical Social Worker, the change concerning interjurisdictional transfers reveals how the County's uniform rules can accommodate concerns

related to specific classifications. In any event, the County's effort to create uniform practices between bargaining units does not release it of its duty to bargain about the proposed changes.

The County also misses the mark to the extent that it relies on the above-noted principle that a mere non-substantive rewrite does not trigger a duty to bargain. (*Alum Rock*, *supra*, PERB Decision No. 322, p. 22.) Here, each of the changes to the rules effected a substantive change to promotional procedures or criteria.

The County's contention that it has always *identified* desired qualifications in its recruitment bulletins is immaterial. Under the MSR and the RRP, applicants must generally meet the "minimum qualifications" to be advanced to the next step in the competitive process. But the RRP, unlike the MSR, allows the County to restrict further advancement to those candidates who also possess "desirable" qualifications, a higher standard. These restrictions are new to the rules regardless of whether the County identified desired qualifications in the past.

Likewise lacking merit is the County's claim that the difference in language describing interjurisdictional transfers does not amount to a substantive change. To support its argument, the County emphasizes that both rules permit interjurisdictional transfers, and the County stresses that it used the MSR language to facilitate hiring Brea police officers when the Sheriff's Office took over law enforcement services for that city. But the County's argument misses the point. Comparing the two policies, it is clear that RRP article II, section 4.C changed the rules for interjurisdictional transfers in at least two ways. First, whereas the MSR rule required candidates for interjurisdictional transfer to have held permanent status in their prior agency, the RRP rule contains no such restriction. Second, the MSR rule described a process in which the names of employees approved for interjurisdictional transfer were placed

directly on the *eligible* list containing the names of *all* candidates who successfully applied to a recruitment, completed assessments, and were eligible to be hired. The RRP rule, by contrast, allows the County, for the first time, to exclude employees who are not interjurisdictional transfers from applying to a recruitment at all. This new rule thus can severely impact the promotional opportunities of employees the Association represents, by making them ineligible for certain recruitments.

The "absent rater formula" is also a substantive change, introducing a new method of scoring applicants. Thus, the changes at issue are substantive changes to the County's promotional procedures and well within the scope of representation. Because the other unilateral change elements are not in dispute, we find that the County violated the MMBA by implementing changes to the MSR/RRP without affording the Association advance notice and an opportunity to bargain over the decision.

Alhambra

In support of the contrary conclusion, the ALJ in this case relied on *Alhambra*, *supra*, PERB Decision No. 2139-M. As noted *ante*, last year we found that *Alhambra* had not construed *Claremont* correctly; at that time, we did not have before us any issue regarding promotional qualifications, so we did not consider whether *Alhambra* was incorrect in its substantive conclusion. (*County of Orange*, *supra*, PERB Decision No. 2594-M, pp. 17-20.) The facts of this case, however, require us to review *Alhambra*'s conclusion, and based on the below analysis we disavow the remainder of *Alhambra*'s scope of representation analysis.[4]

[4] We leave undisturbed *Alhambra*'s discussion of the taking of official notice. (See, e.g., *Santa Clara County Superior Court* (2014) PERB Decision No. 2394-C, p. 16.)

Alhambra sidestepped thirty-five years of precedent, as follows. First, *Alhambra* simply did not cite to the most recent relevant precedent, *Riverside, supra*, PERB Decision No. 2027-M, p. 14, wherein the Board had noted prior appellate precedent holding promotional criteria and procedures to be negotiable. Although *Alhambra* cited those appellate decisions—*Vallejo* and *Pleasanton*—it attempted to distinguish both cases on the ground that they allegedly involved only promotional procedures rather than substantive promotional criteria. We find no passage in *Vallejo* demonstrating that is true. While *Pleasanton* involved promotional procedures, the appellate court's critical finding was that such procedures were just as critical to terms and conditions of employment as the substantive promotional criteria. (*Pleasanton, supra,* 56 Cal.App.3d at p. 971.)

Alhambra did acknowledge that substantive promotional criteria were at issue in *Alum Rock*, wherein the Board had specifically found such qualifications to be related to wages, hours, evaluation, and therefore within the scope of representation. (*Alhambra, supra*, PERB Decision No. 2139-M, p. 16.) *Alhambra* noted that *Alum Rock* had found the particular unilateral actions at issue lawful only because they made no substantive changes other than compliance with external law. This acknowledgement constituted yet another reason that *Alhambra* should have affirmed the ALJ's ruling in favor of the union therein, rather than finding promotional qualifications to be nonbargainable. Instead, *Alhambra* drastically reinterpreted *Alum Rock*. While *Alum Rock* found promotional qualifications to fall within the scope of representation, *Alhambra* unreasonably claimed that the opposite holding could be gleaned from *Alum Rock*. *Alhambra* reached this faulty conclusion in part based on its incorrect interpretation of *Claremont* as applying a balancing test to *every* management decision, irrespective of whether it relates to a term that directly defines the employment

relationship or involves a change in course or scope of direction of the enterprise. As noted *ante*, *Alhambra* lacked the advantage of *Richmond Firefighters*' clarification of *Claremont*, and erred in concluding that the balancing test applies to all management decisions, rather than just the closest cases in the third category. (*County of Orange*, *supra*, PERB Decision No. 2594-M, pp. 17-20.)

Alhambra further erred by misapprehending the second prong of the *Claremont* test and, even if balancing was appropriate under the third prong, by considering unrelated public policy concerns in determining whether a decision is adverse to bargaining unit employees and treating changes as outside scope if damages do not occur immediately. In *Alhambra*, the city unilaterally eliminated a requirement that fire engineer candidates for fire captain possess certain certifications. (*Alhambra*, *supra*, PERB Decision No. 2139-M, p. 6.) Prior to the change, the fire captain class specification required captains to possess an Alhambra Fire Department Fire Engineer certification[5] and Driver/Operator 1A/1B certification.[6] (*Ibid*.) But some fire engineers already performed these functions even without such certifications. (*Id*. at p. 6.) The fire chief believed it was "ridiculous" to exclude from consideration for fire captain positions some senior fire engineers who performed these functions without the certifications while privileging candidates who possessed the certifications, but lacked the experience. (*Ibid*.) Thus, re-examining the *Alhambra* facts now in light of the above-noted precedent stretching from *Vallejo* through *Richmond Firefighters*, it is clear that the promotional criteria

[5] The Alhambra Fire Department Fire Engineer certification covered subjects related to driving and operating a fire apparatus and operating the pumping and hydraulics equipment. (*Alhambra*, *supra*, PERB Decision No. 2139-M, p. 5.)

[6] The Driver/Operator 1A/1B certification covered the subject of hydraulics and pump operations and the overall responsibilities of a driver/operator of a fire apparatus. (*Alhambra*, *supra*, PERB Decision No. 2139-M, p. 5.)

at issue directly defined the employment relationship and did not involve a change in the direction of the enterprise, especially given that they concerned only promotional opportunities, not the start or conclusion of any service to the public or the fundamental nature of any such service.

Alhambra also erred by considering the public policy benefit of increased competition when it was determining whether any adverse effect on employment terms could be shown. Specifically, the Board found that relaxing minimum qualifications did not have such an effect, in part because "competition for jobs in the public sector is desirable to promote efficiency and prevent patronage in the public service." (*Alhambra*, *supra,* PERB Decision No. 2139-M, p. 15.) This approach is analytically unsound. The First District Court of Appeal in *Pleasanton* cautioned against evaluating public policy outcomes in a scope analysis. In *Pleasanton*, the trial court found a change to a local personnel rule was outside the scope of representation because "[r]easonable steps to reduce that number [of employees advancing to the examination process] without lowering employee quality seem proper [and that] the amendment was [r]easonable." (*Pleasanton*, *supra,* 56 Cal.App.3d at pp. 969-970.) But the Court of Appeal said,

> We first conclude that the latter determination does not command validation . . . because it is irrelevant. The question is not whether the amendment is 'reasonable' or was effected for good cause, nor even whether the city was empowered to adopt it over objections expressed by the union in a 'meet and confer' procedure. The issue is whether the M-M-B Act permitted the city to adopt it, unilaterally, *in the absence* of such procedure.

(*Id*. at p. 970, italics in original.) Likewise, here, the opinion that increasing competition is a desirable policy goal is immaterial to a scope of representation analysis.

Alhambra further erred by casting as "speculative" the argument that relaxing minimum qualifications is adverse to existing bargaining unit employees because it subjects them to greater competition for promotional opportunities. *Alhambra* noted, "[t]he record contains no evidence that any current employee without the certifications was promoted over a candidate meeting the certification requirements, as the City has not yet implemented the change." (*Alhambra*, *supra*, PERB Decision No. 2139-M, p. 15.) From this it concluded, "any asserted adverse impact is purely speculative." (*Ibid*.) *Alhambra* erred by conflating whether a decision is adverse with whether damages have immediately realized. Instead, decisions can be adverse when they curtail employees' opportunities even absent any immediate adverse effect on a particular employee. (*Indio Police Command Unit Assn. v. City of Indio* (2014) 230 Cal.App.4th 521, 537-38.) In *Alhambra*, the city's decision was adverse to existing employees because it diminished their opportunity for promotions and whether any employee lost a promotion because of the decision is an issue for remedies, not scope of representation.

Finally, *Alhambra* erred in concluding that an employer's interest in hiring qualified employees to provide services to the public means that the determination of minimum qualifications, having an *effect* on public services, is thus a fundamental managerial or policy decision. (*Alhambra*, *supra*, PERB Decision No. 2139-M, p. 20.) Rather, the question is not whether there is some effect on public services, but whether the decision *relates primarily* to the merits, necessity, or organization of public services or rather primarily to the employment relationship. (*County of Kern* (2018) PERB Decision No. 2615-M, pp. 10-11.) Because an employer's interest in hiring and promoting qualified employees—like the wages it uses to attract or retain them—is central to the employment relationship, changing minimum qualifications of existing employees is typically a matter within the scope of representation.

Likewise, in *Alhambra*, the decision bore little relation to services to the public, but was predominately an employment matter within the scope of representation.

Effects Bargaining

The County also violated the MMBA with regard to effects bargaining. The Association learned of the changes to the MSR/RRP more than three months after the County unilaterally implemented them. Nonetheless, the ALJ found the Association waived its right to effects bargaining because did not demand to bargain effects after it learned about the unilateral implementation. This is not the law. In *Pasadena Area Community College District*, on which the ALJ relied, the employer made a non-negotiable decision in July 2009, but its intended implementation date was January 2010. (*Pasadena Area Community College District* (2011) PERB Decision No. 2218, adopted proposed decision at p. 5.) The union learned of the decision when it was made, but failed to make a demand to bargain the effects. (*Ibid*.) Since there was a gap between the decision and implementation, the Board held the union waived its right to bargain effects for failure to make a demand. (*Ibid*.) But where a union learns of a decision after implementation, there can be no waiver because a union's obligation to demand effects bargaining never arises in the face of an employer's unilateral implementation, which renders effects bargaining futile. (*City of Sacramento* (2013) PERB Decision No. 2351-M, pp. 40-41; *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 24.) Nor were the effects identified by the Association—job security and promotional opportunities—speculative. (See discussion *ante*.) Thus, the County also violated the MMBA by implementing changes to the MSR/RRP without affording the Association advance notice and an opportunity to bargain effects.

Remedy

Having found the County violated the MMBA by unilaterally enacting four changes to the rules governing its merit system, we next turn to the appropriate scope of the remedy. Though the changes at issue applied across the board to the County's bargaining units, only the charges brought by the Association are before us. In *City of San Luis Obispo* (2016) PERB Order No. Ad-444-M, we explained that:

> When an employer's conduct is alleged to constitute a unilateral change or other bargaining violation simultaneously affecting more than one bargaining unit, the exclusive representative of each unit must file a charge and litigate on behalf of the employees in its respective unit. [Citations.] In such circumstances, the Board's usual practice is to limit the remedy to only the unit or units where the designated representative has successfully litigated the case. [Citations.] This approach is necessary to protect the rights of the respondent to notice of the allegations against it and to protect the rights of other employee organizations who, for whatever reason, may prefer to acquiesce to an employer's conduct rather than file and litigate unfair practice charges.

(*Id*. at p. 6.) Accordingly, we confine our remedy to declaring the four changes enumerated above void and unenforceable as to the Association and the bargaining units it represents.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, it has been found that the County of Orange (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505, 3506, and 3506.5, subdivisions (a), (b), and (c) and committed an unfair practice under section 3509(b) and PERB Regulation 32603 subdivisions (a), (b), and (c) by changing its merit selection and/or recruitment rules without prior notice and the opportunity to bargain having been afforded to the Association of Orange County Deputy Sheriffs.

Pursuant to section 3509, subdivision (a), of the Government Code, it is hereby ORDERED that the County's Recruitment Rules and Policies article III, section 2; article IV, section 2.B.1; article II, section 4.C; and, article IV, section 2.B.4 are void and unenforceable and instead the predecessor Merit Selection Rules article III, section 2; article IV, section 3.B; article IV, section 2.C; article IV, section 3.B remain in force as to employees represented by the Association of Orange County Deputy Sheriffs. The County, through its governing board, and representatives, shall:

A. CEASE AND DESIST FROM:

1. Enforcing, as to any employees represented by Association of Orange County Deputy Sheriffs, Recruitment Rules and Policies article III, section 2; article IV, section 2.B.1; article II, section 4.C; and, article IV, section 2.B.4.

2. Implementing an unlawful unilateral change and refusing to meet and confer with the Association of Orange County Deputy Sheriffs prior to adopting proposed policies concerning matters within the scope of representation.

3. Interfering with the right of bargaining unit employees to be represented by the Association of Orange County Deputy Sheriffs.

4. Denying the Association of Orange County Deputy Sheriffs its right to represent employees in their employment relations with the County.

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

1. Within ten (10) workdays after this decision is no longer subject to appeal, change the County's Recruitment Rules and Policies article III, section 2; article IV, section 2.B.1; article II, section 4.C; and, article IV, section 2.B.4 to state that those sections do not apply as to any employees represented by Association of Orange County Deputy

Sheriffs and that instead Merit Selection Rules article III, section 2; Article IV, section 3.B; article IV, section 2.C; article IV, section 3.B remain in force as to employees in bargaining units represented by the Association of Orange County Deputy Sheriffs.

2. Within two (2) workdays after completing the action described above in paragraph (B)(1), notify the Association of Orange County Deputy Sheriffs of the same by electronic mail.

3. Within ten (10) workdays after this decision is no longer subject to appeal, post at all work locations in the County, where notices to employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that the County will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. 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 in the bargaining units represented by the Association of Orange County Deputy Sheriffs. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, altered, defaced or covered with any other material.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board or the General Counsel's designee. The County shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be served concurrently on the Association of Orange County Deputy Sheriffs.

Members Krantz and Paulson joined in this Decision.

APPENDIX

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. LA-CE-1108-M, *Association of Orange County Deputy Sheriffs v. County of Orange*, in which all parties had the right to participate, it has been found that the County of Orange violated the Meyers-Milias-Brown Act (MMBA) by unilaterally changing the County's promotional practices.

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

A. CEASE AND DESIST FROM:

1. Enforcing, as to any employees represented by Association of Orange County Deputy Sheriffs, Recruitment Rules and Policies article III, section 2; article IV, section 2.B.1; article II, section 4.C; and, article IV, section 2.B.4.

2. Implementing an unlawful unilateral change and refusing to meet and confer with the Association of Orange County Deputy Sheriffs prior to adopting proposed policies concerning matters within the scope of representation.

3. Interfering with the right of bargaining unit employees to be represented by the Association of Orange County Deputy Sheriffs.

4. Denying the Association of Orange County Deputy Sheriffs its right to represent employees in their employment relations with the County.

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

1. Within ten (10) workdays after this decision is no longer subject to appeal, change the County's Recruitment Rules and Policies article III, section 2; article IV, section 2.B.1; article II, section 4.C; and, article IV, section 2.B.4 to state that those sections do not apply as to any employees represented by Association of Orange County Deputy Sheriffs and that instead Merit Selection Rules article III, section 2; Article IV, section 3.B; article IV, section 2.C; article IV, section 3.B remain in force as to employees in bargaining units represented by the Association of Orange County Deputy Sheriffs.

2. Within two (2) workdays after completing the action described above in paragraph (B)(1), notify the Association of Orange County Deputy Sheriffs of the same by electronic mail.

Dated: _____ COUNTY OF ORANGE

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.