STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LONG BEACH SUPERVISORS EMPLOYEES ASSOCIATION, Charging Party, v. CITY OF LONG BEACH, Respondent. --- INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 47, Joined Party.	Case No. LA-CE-1467-M PERB Decision No. 2771-M June 9, 2021

Appearances: City Employees Associates by Jeffrey W. Natke, General Manager, for Long Beach Supervisors Employees Association; Atkinson, Andelson, Loya, Ruud & Romo by Irma Rodríguez Moisa and Eric T. Riss, Attorneys, for City of Long Beach; Levy Phillips by Lewis N. Levy and Daniel R. Barth, Attorneys, for International Brotherhood of Electrical Workers, Local 47.

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by charging party Long Beach Supervisors Employees Association (LBSEA) to a proposed decision by an administrative law judge (ALJ). LBSEA exclusively represents the Skilled & General Supervisors Unit (Supervisors Unit) at respondent City of Long Beach. The parties' dispute arose when LBSEA filed

the underlying unfair practice charge concerning a decertification petition (Petition) that joined party International Brotherhood of Electrical Workers, Local 47 (IBEW) filed pursuant to the City's Employer-Employee Relations Resolution (EERR), seeking to decertify and replace LBSEA as the exclusive representative of the Supervisors Unit.

The ALJ concluded that the City violated the EERR, the Meyers-Milias-Brown Act (MMBA), and PERB Regulations by: (1) applying a rule concerning revocation of proof of support that was not contained in the EERR, and (2) disclosing to IBEW the identity of two employees who had sought to revoke their support for the Petition.[1] The ALJ dismissed all other claims set forth in the complaint in this matter, which are detailed *post* at page 4.

LBSEA asks us to reverse the proposed decision as to certain claims the ALJ dismissed, and LBSEA also asks us to adjust the ALJ's proposed remedy. Specifically, while the ALJ ordered the City to cease and desist from further violations, LBSEA submits that we should also permanently bar the City from processing the Petition. Neither the City nor IBEW filed exceptions, and each of these parties urges us to deny LBSEA's exceptions and affirm the proposed decision.

We have reviewed the record and considered the parties' arguments. For the reasons discussed herein, we find no basis to sustain LBSEA's exceptions and we therefore affirm the proposed decision.

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[1] The MMBA is codified at Government Code section 3500 et seq. All statutory references are to the Government Code, unless otherwise specified. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

PROCEDURAL BACKGROUND

LBSEA filed the underlying unfair practice charge against the City on August 4, 2020.[2] Pursuant to PERB Regulation 32002, LBSEA also requested that PERB issue a stay directing the State Mediation and Conciliation Service (SMCS) to pause decertification proceedings that were then underway pursuant to the EERR.

On August 27, PERB's Office of the General Counsel granted the stay request and issued a complaint. The complaint alleged, first, that the City unlawfully accepted the Petition even though IBEW deviated from the EERR by: filing the Petition outside the window period specified in EERR Section 5.1; omitting from the Petition IBEW's telephone number; attaching to the Petition an incomplete list of bargaining unit classifications, thereby seeking to modify the established unit; failing to indicate that IBEW would abide by any existing Memorandum of Understanding (MOU); and relying on authorization cards that were outdated and/or failed to specify that employees desired to have IBEW represent them in their employment relations with the City and no longer wished to be represented by LBSEA.[3] The complaint further alleged that: the City engaged in unlawful conduct by posting notice of the Petition before verifying whether it complied with the EERR; denying two employees' requests to revoke their authorization cards; providing IBEW with an unsolicited copy of the two employees' revocation requests; maintaining an EERR that failed to specify a procedure for

[2] All dates refer to 2020, unless otherwise specified.

[3] We intend the following terms to have the same meaning: "proof of support," "proof of support documents," and "authorization cards." Also, we use the term "union" interchangeably with "employee organization."

revoking previously-submitted authorization cards; and maintaining an EERR that failed to protect the confidentiality of employees seeking to revoke their authorization cards.

Thereafter, the ALJ granted IBEW's request to be joined as a party. On September 16, the City answered the complaint. On October 23, the parties agreed to admit a set of stipulated facts, joint exhibits, and City exhibits. On November 5, the ALJ held an evidentiary hearing, and on February 10, 2021, the ALJ issued his proposed decision.[4]

As noted above, the ALJ ruled in the City's favor as to all allegations except for two: the ALJ concluded that the City unlawfully applied a rule concerning revocation of proof of support that was not contained in the EERR and unlawfully disclosed the identity of employees who had sought to revoke their support for the Petition. No party excepted to these two conclusions in LBSEA's favor. Nor did any party except to the ALJ's findings that the City: did not maintain an illegal EERR; did not consider allegedly outdated proof of support; reasonably concluded that the Petition included all necessary contact information; and posted notice of the Petition only after verifying that the Petition complied with the EERR. We express no opinion regarding any of the ALJ's findings to which no party excepted. They remain binding on the parties but are otherwise non-precedential. (PERB Regs. 32215, 32300, subd. (c); *Trustees of the*

[4] At the formal hearing's outset, the ALJ granted LBSEA's unopposed request to strike from the complaint certain allegedly duplicative allegations. Moreover, with no objection from the parties, the ALJ ordered employee names, signatures, and other identifying information on proofs of support redacted from hearing exhibits, and the ALJ sealed the unredacted support materials from public inspection. (Gov. Code, § 11425.20, subd. (a).)

California State University (San Marcos) (2020) PERB Decision No. 2738-H, p. 2, fn. 2; *County of Orange* (2018) PERB Decision No. 2611-M, p. 2, fn. 2; *City of Torrance* (2009) PERB Decision No. 2004-M, p. 12.)

FACTUAL BACKGROUND

1. The Parties

The City is a public agency within the meaning of MMBA section 3501, subdivision (c) and PERB Regulation 32016, subdivision (a). IBEW is an employee organization within the meaning of MMBA section 3501, subdivision (a). LBSEA is a recognized employee organization within the meaning of MMBA section 3501, subdivision (b) and an exclusive representative within the meaning of PERB Regulation 32016, subdivision (b). LBSEA became the exclusive representative of the Supervisors Unit, which includes various City supervisory classifications, in 2016, after filing a petition to decertify the prior exclusive representative. When LBSEA filed its petition, the prior representative's MOU with the City had expired. LBSEA and the City subsequently negotiated a first MOU, effective July 15, 2016 through September 30, 2019. On July 30, 2020, the City and LBSEA agreed to a successor MOU, retroactively effective October 1, 2019 through October 1, 2023.

2. Recognition and Decertification Procedures Under the EERR

In 1977, the City adopted its EERR in accordance with MMBA section 3507, subdivision (a). The EERR details the City's process for establishing appropriate bargaining units and formally recognizing exclusive bargaining representatives. Dana Anderson, the City's Labor Relations Manager, serves as the Employee Relations Officer (ERO) and administers the EERR.

EERR Section 2 sets out the procedure for seeking recognition as the exclusive representative of an appropriate bargaining unit. Section 2 requires a recognition petition to "indicate by classification the unit of employees claimed to be appropriate," and to be "accompanied by proof of employee approval of no less than thirty percent (30%) of the employees in the proposed unit[.]" Proof of support may be in the form of signed authorization cards, a verified authorization petition, or employee dues deduction authorizations.

In 1982, the City amended its EERR, adding Section 5.1 to describe the process for decertifying an exclusive representative. Section 5.1 provides that an employee, a group of employees, or a union may file a petition asserting that the incumbent union no longer represents a majority of the employees in its bargaining unit.

Although Section 5.1 states that a decertification petition must be accompanied by "[w]ritten proof that at least thirty percent (30%) of the employees in the unit do not desire to be represented by the formally recognized employee organization," Section 5.1 then specifies that adequate written proof includes authorization cards, authorization petitions, and employee dues deduction authorizations. Thus, as discussed further *post*, authorizations in support of a combined decertification-recognition petition need only show that employees have designated the petitioner to represent them in their employment relations with the City.

Section 5.1 also requires a decertification petition to include the petitioner's name, address, and telephone number, the name of the incumbent union, and a

statement that the petitioner "shall agree to abide with any existing Memorandum of Understanding covering said employees."

EERR Section 5.1 includes a window period for filing decertification petitions. This provision states:

> "A Petition for Decertification may be filed only during a period beginning not earlier than two hundred forty (240) days and ending not later than one hundred eighty days (180) before the expiration of any such written agreement. If the agreement is for an indefinite term or for a term longer than three (3) years, a Petition for Decertification may be filed only within the period beginning no earlier than two hundred forty (240) days and ending not later than one hundred eighty (180) days before the third anniversary date of the agreement or any subsequent annual anniversary date."

If the ERO determines that a decertification petition complies with the EERR, the ERO must notify the petitioner and post notice of the petition in employee areas. If the ERO concludes that a petition does not comply with the EERR, the ERO must return the petition to the petitioner with a written statement of any defects.

Pursuant to EERR Section 5.1, a question concerning representation created by a valid decertification petition is decided through a secret ballot election conducted by either the SMCS, or another neutral person or office.

3. IBEW's Petition and Accompanying Authorization Cards

On July 13, IBEW filed its Petition and accompanying proof of support. IBEW submitted its Petition on letterhead bearing the address and telephone number of its Diamond Bar office. The Petition listed IBEW's assistant business manager Richard Reed as its designated representative and the Diamond Bar office as his work location.

IBEW attached to the Petition two lists of Supervisors Unit classifications. The job classifications listed in the two documents are almost identical, with each list including one classification not listed in the other. The first list was a printout from the City's website, while IBEW obtained the second list through a request pursuant to the California Public Records Act (CPRA), Government Code section 6250 et seq. Anderson's staff responded to IBEW's public records request and listed 99 Supervisors Unit bargaining unit members in 28 different job classifications.

According to the Petition, LBSEA no longer had majority support among employees in the Supervisors Unit, and approximately 67 percent of unit employees had signed cards authorizing IBEW to represent them. IBEW submitted its proof of support on signed cards entitled "AUTHORIZATION FOR REPRESENTATION." Sixty-two of the 64 cards included the following text:

> "I authorize Local Union No. 47 of the **International Brotherhood of Electrical Workers** to represent me as my National Labor Relations Act (NLRA) Section 9(a)[5] bargaining representative, in collective bargaining with present and future employers on all present and future jobsites within the jurisdiction of the Union. This Authorization is nonexpiring, binding, and valid until such time as I submit a written revocation."

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[5] NLRA Section 9, subdivision (a) states, in relevant part:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment[.]"

(29 U.S.C. § 159(a).)

(Emphasis in original.)

The remaining two authorization cards included the following text:

> "I authorize Local Union No. ___ of the **International Brotherhood of Electrical Workers** to represent me as my bargaining representative in collective bargaining with my employer."

(Emphasis in original.) The number "47" was filled into the blank space on one of the two cards.

4. The City's Processing of IBEW's Petition

On July 15, Anderson concluded that IBEW's Petition complied with the EERR. To reach this determination, Anderson reviewed IBEW's authorization cards, which she interpreted as demonstrating proof of the signatories' desire for IBEW to replace LBSEA as their representative. Anderson determined that there were approximately 98 bargaining unit employees in the pay period immediately preceding the Petition's filing date and IBEW had submitted sufficient proof of support to meet the 30 percent threshold. That same day, Anderson informed IBEW that she had approved its Petition, and on July 16, she posted a "NOTICE OF FILING RECOGNITION PETITION RELATING TO REPRESENTATION UNIT SKILLED AND GENERAL SUPERVISORY BARGAINING UNIT." Along with the Notice, Anderson posted a list of all classifications in the Supervisors Unit; that list included 14 classifications that were not on either of the lists IBEW had attached to its Petition.

DISCUSSION

The Board reviews exceptions to a proposed decision using a de novo standard of review. (*Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 6.) To the extent that a proposed decision adequately addresses issues raised by certain exceptions, the Board need not further analyze those exceptions. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) LBSEA raises four primary issues in its exceptions. First, LBSEA argues that the City violated its EERR by accepting the Petition despite IBEW's failure to include required information. Second, LBSEA contends that the City processed the Petition despite IBEW filing it outside the window period specified in the EERR. Third, LBSEA contends that the City enforced its EERR contrary to the MMBA by accepting proof of support that did not clearly demonstrate the signatories' intent to decertify LBSEA as the exclusive representative of their bargaining unit. Finally, LBSEA argues that the ALJ erred by declining to bar the City from processing the Petition.

We consider each issue in turn.

I. The City Reasonably Approved IBEW's Petition Even If It Arguably Contained Immaterial Omissions

When evaluating an MMBA employer's application of its local rules, PERB follows a reasonableness standard. (*City of Madera* (2016) PERB Decision No. 2506-M, p. 5 (*Madera*).) PERB finds no unfair practice where the agency reasonably interprets its own rules in a manner that effectuates the MMBA's purposes. (*Ibid*.) The inverse is true if the public agency acted inconsistently with a reasonable interpretation of the rule. (*County of Riverside* (2011) PERB Decision No. 2163-M, adopting proposed decision at pp. 8-9.)

LBSEA contends on appeal that the City violated its EERR by approving IBEW's Petition even though it failed to include two types of required information. First, LBSEA cites IBEW's failure to include a statement required by EERR Section 5.1 that it would agree "to abide with any existing [MOU] covering [bargaining unit] employees" should it succeed in decertifying the incumbent bargaining representative. We agree with the ALJ that the City reasonably concluded no such affirmation was required in this instance, as LBSEA's expired MOU was not an "existing" agreement for the purposes of Section 5.1.[6]

The City also reasonably found that the Petition adequately described the Supervisors Unit. For several reasons, we do not find significance in the minor difference between the two lists IBEW attached to its Petition, nor in the fact that the City ultimately posted a notice showing 14 classifications that were not on either of the lists IBEW had attached to its Petition. First, LBSEA has abandoned on appeal any contention that by accepting IBEW's Petition, the City tacitly agreed with an alleged improper attempt to modify the Supervisors Unit.[7]

Second, Anderson reasonably concluded that, by its terms, the EERR does not require an exhaustive list of classifications included in the unit, but rather simply

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[6] As the ALJ noted, the City's interpretation also avoided conflict between the EERR and precedent holding that a succeeding union is not contractually bound by an MOU its decertified predecessor executed, even if negotiations are required before implementing employment terms that deviate from the status quo. (*Compton Community College District* (1989) PERB Decision No. 728, adopting proposed decision at p. 69.)

[7] Moreover, the parties stipulated that IBEW's Petition sought to decertify LBSEA "as the exclusive representative of the Supervisors Unit."

requires the petition to name the established bargaining unit to which it pertains. While Section 2 requires the petitioner to "indicate by classification the unit of employees claimed to be appropriate," Section 5.1 contains no such requirement. It is therefore reasonable to construe the EERR to mean that a recognition petition covering unrepresented positions must specify all classifications at issue, but a petition to decertify and replace an incumbent union need only identify the unit at issue.

Third, IBEW exercised due diligence in attempting to determine the classifications in the Supervisors unit, both by examining the City's website and submitting a CPRA request. When these efforts led to slightly different lists, IBEW attached both lists in an abundance of caution. The record suggests a logical and innocent explanation for why the City ultimately listed 14 additional classifications, after having left them out of its public records response: testimony indicates that the lists appended to the Petition included classifications populated by at least one incumbent, suggesting the additional 14 classifications were, more likely than not, vacant. Also bolstering this conclusion is the fact that IBEW's Petition correctly stated the number of employees in the unit, or the Petition was at most off by a single employee. Moreover, Anderson testified that IBEW had no way of knowing about the additional 14 classifications. Given that an MMBA employer must interpret its EERR in a reasonable manner (*Madera*, *supra*, PERB Decision No. 2506-M, p. 5), an EERR should not be interpreted so strictly that it becomes a minefield freezing the status quo in place until a petitioner runs a gauntlet of unreasonably difficult requirements. For all these reasons, the City's interpretation was reasonable.

II. The City Properly Interpreted the Contract Bar Provision in its EERR

The complaint alleges that IBEW filed its Petition outside the window period specified in EERR Section 5.1. The ALJ found that the contract-based window period in Section 5.1 no longer applied after the MOU expired. Accordingly, the ALJ determined that Section 5.1 could not be applied to bar petitions filed while an incumbent has no MOU in effect. For the following reasons, we agree with the ALJ.

The MMBA does not contain a "contract bar," viz., a rule limiting new recognition or decertification petitions while an MOU is in effect. (*City of San Rafael* (2004) PERB Decision No. 1698-M, p. 2, fn. 2.) The absence of such statutory language provides each MMBA employer some discretion to find a reasonable balance between employees' right of free association and the need for stable labor relations. (*Id*. at pp. 2-3, citing *Service Employees Internat. Union v. City of Santa Barbara* (1981) 125 Cal.App.3d 459.) However, an MMBA employer's local rules may not undercut or frustrate the MMBA's policies and purposes. (*International Federation of Prof. & Technical Engineers v. City & County of San Francisco* (2000) 79 Cal.App.4th 1300, 1306; *Huntington Beach Police Officers' Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 500-502.)

EERR Section 5.1 imposes a contract bar providing that a decertification petition must be filed during a window period of 240 to 180 days before the expiration of any MOU or, for agreements with an indefinite term or a term longer than three years, the 60-day filing window occurs "before the third anniversary date of the agreement or any subsequent anniversary date." The City interpreted Section 5.1 as applying only when an MOU is in effect. Because no MOU was in effect on July 13,

2020, when IBEW filed its Petition, the City concluded that the EERR did not bar the Petition. LBSEA, in contrast, urges that Section 5.1 imposes a post-expiration window period based on the anniversary date of an MOU even after the MOU expires and there is no successor MOU in effect.

LBSEA thus asks us to convert the window period from a contract bar to a novel prohibition featuring a window period that, while calculated based upon a contract anniversary date, may continue to operate even after contract expiration, if and only if the contract duration was longer than three years. Like the ALJ, we find LBSEA's proffered interpretation conflicts with the traditional understanding of a contract bar and would produce inequitable and inconsistent results for would-be decertification petitioners. For instance, under LBSEA's interpretation, a decertification petitioner might have vastly different rights depending on whether an incumbent union failed to reach an initial MOU, agreed to an MOU lasting three years or less and saw the MOU expire, or agreed to a longer MOU that expired. We find the most logical reading to be the same as that which the City adopted: the EERR establishes a traditional contract bar with a relatively standard set of window periods, and that bar lapses when there is no MOU in effect. Indeed, both LBSEA and the City interpreted the EERR in exactly this manner in 2016, when LBSEA filed its petition to decertify the prior incumbent union; LBSEA's petition would have been disallowed under the interpretation it now espouses.

LBSEA concedes that in 2016 it interpreted Section 5.1 as a contract bar that no longer applied when no MOU was in effect, but LBSEA contends that *Madera*, *supra*, PERB Decision No. 2506-M mandates the opposite result. LBSEA misreads

Madera, in which the employer's local rules provided a relatively standard contract bar combined with a defined calendar month in which petitions could be filed when there was no contract bar. The provision in question read as follows:

> "A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Office *only during the month of March of any year* following the first full year of recognition or during the thirty (30) calendar day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later."

(*Id*. at p. 4, emphasis in original.) Although the local rule was not a model of clear drafting, the Board gave the rule its most logical reading: during the term of an MOU lasting three years or less, the local rule established a contract bar limiting decertification petitions to a 30-day period based on the MOU's expiration date, while if no MOU was in effect, the rule permitted decertification filings only in the month of March each year following the first year a union is recognized. (*Id*. at p. 7.) The Board found that the employer's rule was reasonable and did not conflict with the MMBA. (*Id*. at pp. 7, 9.)[8]

[8] PERB Regulation 61380, subdivision (c), which applies to MMBA employers that have not adopted a reasonable local rule regarding decertification, permits a decertification petition any time after an MOU expires and before a successor MOU takes effect. However, *Madera* held the MMBA does not require local rules to permit a decertification petition immediately upon MOU expiration, provided that the rule allows a reasonable and equitable opportunity to file decertification petitions when no MOU is in effect. (*Madera*, *supra*, PERB Decision No. 2506-M, p. 9; cf. *County of Ventura* (2018) PERB Decision No. 2600, pp. 44-45 [employer's local rule violates the MMBA if

Thus, *Madera* does not mandate that we import a post-expiration window period into Section 5.1 when there is none. Moreover, in contrast to the local rules in *Madera* (which included both a contract bar and a reasonable post-contract window period that applied equally regardless of the length of the expired MOU), Section 5.1 of the City's EERR does not contain a window period applicable to "any year" following recognition. Instead, the EERR's window periods remain tethered to an MOU.

In sum, the City reasonably concluded that Section 5.1's limited contract bar could not be applied to decertification petitions filed while the incumbent union had no contract in place with the City.

III. The City Properly Accepted IBEW's Proof of Support

LBSEA contends that the City was required to reject IBEW's authorization cards because they stated only that the signatory employees wanted IBEW to represent them, without mentioning decertification of the incumbent representative. We disagree.

As noted above, under EERR Section 5.1 employees' authorization cards designating a petitioning union to represent them in their employment relations with the City provides sufficient evidence that the employees wish to both decertify and replace their exclusive representative. IBEW's proof of support therefore complied with Section 5.1. The primary remaining question is whether the EERR violates the MMBA in permitting IBEW to use such authorization language. We do not agree with LBSEA that the MMBA bars IBEW's authorization language, particularly given that, in the

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it establishes certain dates in a calendar year when a union can file a petition to represent unrepresented employees].)

absence of any applicable local rule, PERB would consider IBEW's authorization language to be sufficient proof of support for a combined decertification-recognition petition. (PERB Reg. 61350, subd. (b)(2).)[9]

IV. It Is Appropriate to Dissolve the Stay of Decertification Proceedings

When PERB stays representation proceedings pending resolution of unfair practice allegations that could impact employee free choice, PERB must determine at the close of unfair practice proceedings whether representation proceedings can resume. If the charging party fails to establish any unfair practice, representation proceedings can go forward. However, where the charging party prevails in its charge in whole or in part, PERB must assess whether the conduct found unlawful has a continuing tendency to harm employee free choice and, if so, whether PERB's remedies, combined with the passage of time or other factors, are sufficient to remedy that tendency and permit fair representation proceedings to go forward. (*Children of Promise Preparatory Academy* (2018) PERB Order No. Ad-470. p. 6 & adopting administrative determination at p. 4.)

Here, the ALJ refused LBSEA's request to cancel future election proceedings, reasoning that the violations LBSEA established were so limited that they would not tend to prevent a fair election from going forward. We agree.

[9] We agree with the ALJ's assessment that the authorization cards' reference to federal labor law does not call into question the signatories' desire to have IBEW represent them for the purposes of collective bargaining. IBEW has routinely used this authorization card language for organizing, since at least 2012, in both the California public sector and private sector organizing. While IBEW would be well advised to create a different card for public sector organizing, the record contains no evidence that this oversight tended to impact employee free choice.

As discussed throughout this decision, we have not sustained any of LBSEA's exceptions as to claims the ALJ dismissed. LBSEA has therefore established only the two violations the ALJ found, which no party challenged on appeal: the City applied a rule concerning revocation of proof of support that was not contained in its EERR, and the City disclosed the identity of two employees who had sought to revoke their support for the Petition. The first of these two violations has little tendency to impact employee free choice in the instant circumstances, as the only two revocations at issue were insufficient in number to change IBEW's proof of support and in any event they arrived too late to be counted. (*Central Basin Municipal Water District* (2021) PERB Order No. Ad-486-M, p. 16 [because proof of support is assessed as of the date a petition is filed, revocations received after a petition is filed are irrelevant].)

The second of the two violations could harm free choice for the two employees whose identities the City disclosed and possibly for other employees who learned of the disclosure. (Cf. *City of Bellflower* (2021) PERB Decision No. 2770-M, p. 23 [disclosure of proof of support documents tends to interfere with protected rights].)[10] Nonetheless, we have determined to dissolve the stay given that the record does not

[10] In *City of Bellflower, supra,* PERB Decision No. 2770-M, we noted that proof of support is a unique type of statement warranting confidentiality protection. (*Id.* at p. 22.) The e-mails at issue here, in which two employees belatedly attempted to revoke their proof of support, were not technically proof of support documents, and in most instances such documents should not be sent to the employer, as an employer's possession of proof of support or related documents will often constitute at least as great (if not greater) a confidentiality breach as a competing union's possession of the same. Notably, this case does not present the question of whether the MMBA permits a local rule in which a union must submit its proof of support to the employer, which tends to create complications such as those at issue here. (See *id.* at p. 20, fn. 15 [noting issue remains unsettled in the absence of any challenge].)

indicate whether the City's disclosure tended to materially inhibit unit employees from freely deciding whether to change their exclusive representative in the coming months. To the extent evidence emerges suggesting that the City's disclosure of two employees' identities may, in fact, impact fair election conditions, LBSEA is free to introduce such evidence via a post-election objection.[11]

Finally, because the Board strives to expedite representation matters and prevent unnecessary further litigation, we note one aspect of the City's EERR that the City is prohibited from enforcing when it processes IBEW's Petition. (*County of Ventura*, *supra*, PERB Decision No. 2600-M, pp. 44-45 [prohibiting employer from enforcing illegal local rule in further representation proceedings, despite fact that parties had not reached that point of proceedings in the past and therefore the charge at issue had not covered the illegal provision].) Specifically, we note that the City cannot enforce one aspect of EERR Section 5.1: a quorum requirement that permits decertification only if a majority of unit employees participate in the vote. This provision violates the MMBA and is therefore unenforceable. (*County of Imperial* (2007) PERB Decision No. 1916-M, pp. 15-19.)

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in the case, the Public Employment Relations Board (PERB) finds that the City of Long Beach (City) violated its local rules, PERB Regulations, and the Meyers-Milias Brown Act (MMBA), Government Code section 3500 et seq. Specifically, the City

[11] Moreover, nothing in our decision prevents any party from seeking a new stay based on other unfair practices not already litigated in this case.

violated MMBA sections 3506, 3506.5, subdivisions (a), (b), and (d), 3507, and 3509, subdivision (b) and PERB Regulation 32603, subdivisions (a), (b), (d), and (f) by: (1) applying a rule concerning revocation of proof of support that was not contained in the City's Employer-Employee Relations Resolution (EERR), and (2) disclosing to a petitioning union the identity of two employees who had sought to revoke their support for a decertification petition. All other claims are dismissed.

It is hereby ORDERED that the stay of election issued on August 27, 2020 is dissolved, and the City, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Applying representation rules not contained in its EERR or otherwise applying the EERR in a manner inconsistent with this decision.

2. Interfering with union or employee rights protected under the MMBA.

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

1. Process the decertification petition filed by International Brotherhood of Electrical Workers, Local 47 in accordance with this decision.

2. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to employees in the Skilled & General Supervisors unit customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the City, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The Notice shall also be posted by electronic

message, intranet, internet site, and other electronic means customarily used by the City to communicate with employees in the Skilled & General Supervisors unit. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.[12]

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. The City 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 all parties to this matter.

Chair Banks and Member Paulson joined in this Decision.

[12] In light of the ongoing COVID-19 pandemic, the City shall notify PERB's Office of the General Counsel in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If the City so notifies the General Counsel's Office, or if any party requests in writing that the General Counsel alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, the General Counsel's Office shall investigate and solicit input from all parties. It shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing the City to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing the City to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing the City to mail the Notice to those employees with whom it does not customarily communicate through electronic means.

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-1467-M, *Long Beach Supervisors Employees Association v. City of Long Beach*, in which all parties had the right to participate, it has been found that the City of Long Beach violated its local rules, Public Employment Relations Board (PERB) Regulations, and the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. by: (1) applying a rule concerning revocation of proof of support that was not contained in the City's Employer-Employee Relations Resolution (EERR), and (2) disclosing to a petitioning union the identity of two employees who had sought to revoke their support for a decertification petition.

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

A. CEASE AND DESIST FROM:

1. Applying representation rules not contained in our EERR or otherwise applying the EERR in a manner inconsistent with PERB's decision.

2. Interfering with union or employee rights protected under the MMBA.

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

1. Process the decertification petition filed by International Brotherhood of Electrical Workers, Local 47 in accordance with PERB's decision.

Dated: _____ City of Long Beach

By: _____
Authorized Agent

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