



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

COUNTY OF SANTA CLARA,

Employer,

and

SANTA CLARA-SAN BENITO COUNTIES
BUILDING AND CONSTRUCTION TRADES
COUNCIL,

Exclusive Representative.

Case No. SF-IM-230-M

PERB Order No. Ad-483-M

December 17, 2020

Appearance: Office of the County Counsel by James E. Ayden, Deputy County Counsel, for County of Santa Clara.

Before Banks, Shiners, and Krantz, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the County of Santa Clara from an administrative determination by PERB's Office of the General Counsel (OGC) to approve a request by the Santa Clara-San Benito Counties Building and Construction Trades Council (Council) pursuant to the Meyers-Milias-Brown Act (MMBA) that the parties' bargaining differences be submitted to a factfinding panel.¹

Having reviewed the record, including the Council's request, the County's opposition, the administrative determination, and the County's appeal, we agree with

¹ The MMBA is codified at Government Code section 3500 et seq. All further statutory references are to the Government Code.

OGC that the Council's factfinding request must be granted.² We therefore affirm the determination for the reasons set forth below.

FACTUAL BACKGROUND

The Council represents skilled tradespersons and other County employees engaged in the construction and building trades. Its memorandum of agreement with the County expired on November 1, 2020,³ and the parties have been bargaining for a successor agreement since May. On September 24, the Council sent a written declaration of impasse to the County, and filed its factfinding request with PERB the next day.

With respect to bargaining impasses, the County's local rules contemplate mediation if the parties are unable to agree on another method for resolving their dispute. Specifically, Section A25-414(a) of the County Ordinance provides:

"If the appropriate level of management and the recognized employee organization fail to reach agreement prior to June 1 of a fiscal year on a matter within the scope of representation affecting the budget and subject to approval by the Board of Supervisors and the parties together are unable to agree on a method of resolving the dispute, the dispute shall be submitted to mediation."

Similarly, Section A24-415(a) provides:

"If after a reasonable period of time, the appropriate level of management and recognized employee organization fail to reach agreement on a matter not subject to approval by the Board of Supervisors and within the scope of representation, the parties together may mutually agree upon a method of resolving the dispute including, but not limited to, mediation.

² The Council did not file a response to the County's appeal.

³ All further dates refer to 2020.

If mutual agreement on a method for resolving the dispute is not achieved within a reasonable period of time, the dispute shall be submitted to mediation.”

Here, neither party initiated the process for mediation under the County’s local rules. Rather, the Council requested factfinding, which OGC approved. The County now contends this was a mistake because the Council was required to complete mediation under the local rules before requesting factfinding. We disagree.

DISCUSSION

As relevant here, MMBA section 3505.4, subdivision (a) provides:

“The employee organization may request that the parties’ differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties’ agreement to mediate or a mediation process required by a public agency’s local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties’ differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.”

PERB Regulation 32802, implementing section 3505.4, provides:

“(a) An exclusive representative may request that the parties’ differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

“(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties’ agreement to mediate or a mediation process required by a public agency’s local rules; or

“(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.”⁴

PERB’s review of a factfinding request is limited to determining whether the request satisfies the procedural requirements of MMBA section 3505.4 and PERB Regulation 32802. (*City of Oakland* (2018) PERB Order No. Ad-462-M, p. 4.) That is, PERB does not evaluate whether the parties are in fact at impasse. (*City of Salinas* (2018) PERB Order No. Ad-457-M, p. 6.) Nor is it required to determine whether the impasse concerns a matter within the scope of representation. (*City of Oakland, supra*, PERB Order No. Ad-462-M, p. 6.) Rather, PERB’s inquiry is limited to determining whether (1) there was “a written declaration of impasse from either party, or the appointment or selection of a mediator,” and (2) the factfinding request was timely filed after one of these triggering events. (*Santa Cruz Central Fire Protection District* (2016) PERB Order No. Ad-436-M, p. 5.)

It is undisputed that the Council gave the County a written declaration of impasse on September 24 and filed its factfinding request within 30 days of the impasse declaration, thereby satisfying the procedural requirements under MMBA section 3505.4, subdivision (a) and PERB Regulation 32802(a)(2). The County contends, however, that the Council’s factfinding request should have been denied as premature because the County’s local rules required the Council to “go through the mediation process” before resorting to statutory factfinding.

⁴ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The County's argument relies on the following sentence in MMBA section 3505.4, subdivision (a): "The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules." According to the County, this language means that the window period to request factfinding begins 30 days following (1) "the appointment or selection of a mediator pursuant to the parties' agreement to mediate" or (2) "a mediation process required by a public agency's local rules." But the County's interpretation, which disconnects "the appointment or selection of a mediator" from "a mediation process required by a public agency's local rules," is inconsistent with PERB Regulation 32802, which provides that factfinding may be requested "[n]ot sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant *either* to the parties' agreement to mediate or a mediation process required by a public agency's local rules." (PERB Reg. 32802(a)(1), italics added.) Because the County's proffered interpretation of MMBA section 3505.4, subdivision (a) is contrary to our regulations, we must reject it. (See *Regents of the University of California* (2016) PERB Order No. Ad-434-H, p. 9 [PERB must follow its own regulations].)

Contrary to the County's contention, MMBA section 3505.4, subdivision (a) does not condition factfinding on the completion of mediation mandated by an agency's local rules. Rather, the selection or appointment of a mediator under either "the parties' agreement to mediate or a mediation process required by a public agency's local rules" establishes the applicable window period within which the

employee organization must request factfinding. If the County believes the Council violated a duty to participate in mediation or has otherwise exhibited bad faith, then it should file an unfair practice charge. (*County of Solano* (2018) PERB Order No. Ad-458-M, pp. 9-10.)

Here, no mediator was selected or appointed. Therefore, the factfinding request is timely if the Council filed it within 30 days of its written declaration of impasse. Because the Council filed its request the day after declaring impasse, OGC correctly concluded that the request was timely under MMBA section 3505.4 and PERB Regulation 32802. Because we uphold the administrative determination, we deny the County's request to stay that administrative determination as moot.

ORDER

The appeal of the County of Santa Clara is DENIED and the administrative determination in SF-IM-230-M is affirmed. The County's stay request is DENIED as moot.

Members Shiners and Krantz joined in this Decision.