

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

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 47,

Charging Party,

v.

CITY OF ANAHEIM,

Respondent.

Case No. LA-CE-6-M

Interlocutory Appeal

PERB Order No. Ad-321

April 9, 2003

Appearance: Carol J. Flynn, Attorney, for City of Anaheim.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case comes before the Public Employment Relations Board (PERB or Board) on the City of Anaheim's (City) appeal of a Board agent's interlocutory order refusing to dismiss a charge filed by the International Brotherhood of Electrical Workers, Local 47 (IBEW) and the Board agent's issuance of a complaint based on that charge. The City also submitted a motion to stay further action on the complaint pending resolution of the interlocutory appeal.<sup>1</sup>

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<sup>1</sup> The Board resolves both the appeal and the motion to stay in this decision.

IBEW's charge alleged that the City violated the Meyers-Milias-Brown Act (MMBA)<sup>2</sup> by terminating a probationary employee because she had engaged in the protected activity of filing a grievance. IBEW alleged that this conduct violated MMBA section 3506<sup>3</sup> and City of Anaheim Employer-Employee Relations Resolution, Section 1.06.050.

### BACKGROUND

According to the charge, Dahlia Guillen (Guillen) was employed by the City as a part-time customer services representative from October 1996 to March 2000, at which time she was hired as a full-time customer services representative. Both classifications are represented by IBEW. The parties do not dispute that the City's six-month probationary period for new employees applied to Guillen's new full-time position.

On August 22, 2000, Guillen filed a grievance with the City alleging that she was harassed by her supervisor. No formal or informal meetings were held to address those allegations. The employee was discharged on September 13, 2000. The City refused to accept a grievance challenging the termination on grounds that Guillen was a probationary employee and was not subject to the grievance provisions of the collective bargaining agreement between the City and IBEW.

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<sup>2</sup> MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

<sup>3</sup> Section 3506 provides:

Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502.

IBEW filed a charge with PERB on August 3, 2001, approximately 11 months after the discharge, alleging that the City discharged Guillen because she filed the grievance, in violation of MMBA section 3506. The City requested that the charge be dismissed on grounds that: (1) the charge was untimely because the six-month limitations period contained in Educational Employment Relations Act (EERA) section 3541.5<sup>4</sup> governs MMBA charges before PERB; (2) PERB lacked jurisdiction over the charge, because the Board's jurisdiction over MMBA charges began on July 1, 2001, and was not retroactive; (3) IBEW abandoned its contractual remedies by failing to amend its grievance or file a judicial action to compel arbitration; and (4) the charge failed to state a prima facie case.

The Board agent sent the City a letter indicating she was considering deferring the discrimination allegations to arbitration and requesting waiver of procedural defenses to arbitration, pursuant to the approach announced by the Board in State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S. The City rejected the request, indicating that it “does not believe that deferral of the above matter to arbitration is appropriate and is not willing to submit this dispute to arbitration.”

The Board agent found the City's arguments regarding statute of limitations and retroactivity lacked merit and issued a complaint. The Board agent then joined the City's request for interlocutory review of her refusal to dismiss the charge. The City also requested that processing of the complaint be stayed pending Board resolution of the interlocutory appeal. No further action has been taken on the case while the instant appeal has been pending.

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<sup>4</sup> EERA is codified at Government Code section 3540 et seq.

## CITY'S APPEAL

On appeal, the City reasserts and further develops its arguments presented to the Board agent that a six-month statute of limitations applies to MMBA charges before PERB; PERB's jurisdiction over MMBA charges was not retroactive to events occurring prior to July 1, 2001; and IBEW failed to exhaust its contractual remedies. The City also argues on appeal that the charge should have been dismissed under the equitable doctrine of laches because IBEW unreasonably delayed resolution of this case by failing to timely seek judicial compulsion of arbitration.

## DISCUSSION

### Statute of Limitations

The City argues that the six-month limitation period codified at EERA section 3541.5<sup>5</sup> should apply to MMBA charges because MMBA sections 3501<sup>6</sup> and 3509<sup>7</sup> incorporate the

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<sup>5</sup> EERA section 3541.5 provides, in relevant part:

(a) ... the board shall not do ... the following:

(1) Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

<sup>6</sup> Section 3501 provides, in relevant part:

(f) 'Board' means the Public Employment Relations Board established pursuant to Section 3541.

<sup>7</sup> Section 3509 provides, in relevant part:

(a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c).

powers and duties of the Board as set forth in EERA section 3541.3<sup>8</sup>.

The City reasons that, when the Legislature specified that PERB was to administer MMBA using powers codified at EERA section 3541.3, it must have intended that the exercise of such powers would be circumscribed by the limitations codified in section 3541.5, including the six-month limitations period specified at Section 3541.5(a)(1). As support for this argument, the City notes that MMBA section 3501(f) defines the “Board” as the “Public Employment Relations Board established pursuant to Section 3541.” Moreover, notes the City, the Legislature previously announced in Section 3540 its intent to incorporate other labor relations statutes into “this Chapter,” meaning Government Code Chapter 10.7, which includes Section 3541.5. Thus, reasons the City, by “referencing [in the MMBA amendments] Sections 3541 and 3541.3 within Chapter 10.7 to define the Board and to describe its duties,” Senate Bill (SB) 739<sup>9</sup> “was consistent with the intent of the Legislature expressed in 1975 in

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(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

<sup>8</sup> EERA section 3541.3 sets forth the Board’s powers and duties with regard to, inter alia, representation matters, the investigation and adjudication of unfair practice charges, resolution of requests for injunctive relief, and promulgation of regulations implementing the statutes PERB administers.

<sup>9</sup> SB 739 (2001) amended the MMBA to, inter alia, transfer jurisdiction over MMBA complaints from the Superior Courts to PERB.

Section 3540 to incorporate legislation governing employer-employee relations into ‘this chapter,’ to the extent possible.” The City argues that it “doesn’t make sense” and is “inconceivable” that the Legislature would confer powers to administer MMBA “without concomitant limitations applicable to other agencies under the same Chapter.”

The City also notes that MMBA section 3510(a) provides:

The provisions of this chapter shall be interpreted and applied by the board in a manner consistent with and in accordance with judicial interpretations of this chapter.

Citing similarities between MMBA section 3506 and National Labor Relations Act (NLRA) section 8(a)(1), the City argues that the Board should look to federal precedent for relevant case law to determine the appropriate statute of limitations for MMBA charges before PERB. Citing Del Costello v. Steelworkers (1983) 462 U.S. 151 [76 L.Ed.2d 476] (which held that the NLRA’s six-month statute of limitations for unfair labor practice charges should apply to so-called “hybrid” Labor Management Relations Act Section 301 breach-of-contract and duty of fair representation lawsuits in federal court), the City argues that, as in the private sector, PERB should adopt the “most closely analogous” statute of limitations. Here, argues the City, the most closely analogous statutes of limitations are the six-month periods codified in the Ralph C. Dills Act (Dills Act),<sup>10</sup> EERA, Higher Education Employer-Employee Relations Act (HEERA),<sup>11</sup> the Federal Labor Relations Act, and the Agricultural Labor Relations Act. The City contends that the correctness of this approach is corroborated by the fact that PERB’s

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<sup>10</sup> The Dills Act is codified at Government Code section 3512 et seq.

<sup>11</sup> HEERA is codified at Government Code section 3560 et seq.

jurisdiction was “expanded” by addition of MMBA to the statutes administered by PERB and that the Legislature must have intended that expansion to be consistent with limitations placed on its exercise under pre-SB 739 law.

The Board finds the City’s arguments unpersuasive. In City of Huntington Park (2002) PERB Decision No. 1485-M, the Board affirmed a Board agent’s determination that a three-year statute of limitations applies to MMBA charges before PERB. Affirmance of Board agents’ decisions constitute binding PERB precedent,<sup>12</sup> so the City’s argument is technically foreclosed by recent Board case law. Nevertheless, to promote the purposes of the MMBA and dispose of the issues presented in this case, the Board will respond to each of the City’s arguments.

As correctly noted by the City, MMBA section 3510(a) requires the Board to interpret and apply MMBA “in a manner consistent with and in accordance with judicial interpretations of this chapter.” However, the Board finds it unnecessary and inappropriate to turn to federal case law interpreting the NLRA when the issue presented herein has been more directly resolved by the courts under California state law.

In Giffin v. United Transportation Union (1987) 190 Cal.App.3d 1359 [236 Cal.Rptr. 6] (Giffin), a transit district worker filed a duty of fair representation complaint against his exclusive bargaining representative, the United Transportation Union. Transit districts and the employee organizations representing transit employees are governed by the Public Utilities Code which, like MMBA, is silent with regard to the statute of limitations. In rejecting the union’s argument for a six-month statute of limitations, the Court noted that “the applicable

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<sup>12</sup> See PERB Regulation 32320(c). (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001 et seq.)

state statute of limitations is three years for a liability created by statute.” (Id. at p. 1365.) In so holding, the Court specifically concluded that where public sector labor relations statutes create liability but fail to state a statute of limitations, California Code of Civil Procedure, section 338(a) will apply. (Ibid.)

In Key v. Housing Authority of the City of Oakland (N.D. Cal. March 8, 1994, C 93-1880 BAC) 1994 WL 90182 (Key), which involved a duty of fair representation claim arising under the MMBA, the U.S. District Court for the Northern District of California found that the rationale in the Giffin decision applied equally to cases arising under the MMBA. (Ruling approved in final order in Key v. Housing Authority of City of Oakland (N.D. Cal. 1994, C-93-1880-VRW) 1994 WL 704882 [7 A.D.D. 792, 6 NDLR P 147]; affirmed by Key v. Oakland Housing Authority (9th Cir. 1996) 89 F.3d 845 [nonpub. table decision]; cert. denied, Key v. Oakland Housing Authority (1996) 519 U.S. 1043 [136 L.Ed.2d 539].) Citing Giffin, the Northern District Court stated in Key:

Plaintiff’s claim against the Union [under the MMBA] for breach of the duty of fair representation is subject to a three (3) year statute of limitations.

Thus, both California and federal courts are in accord that the applicable statute of limitations for claims arising under the MMBA is three years. The City does not dispute that a three-year limitations period applied to MMBA cases under established practice and precedent at the time SB 739 was enacted. The City’s invitation to the Board to rule in conflict with the foregoing judicial interpretations by announcing a new rule based on a case interpreting federal law would violate the Board’s clear legislative mandate to construe MMBA in conformity with the treatment it has received in state and federal court.



Moreover, as a general principle, it is assumed that in modifying a statute, the Legislature acts with full knowledge of contemporaneous judicial interpretations of that statute and of related statutes. (Williams v. Garcetti (1993) 5 Cal.4<sup>th</sup> 561, 572 [20 Cal.Rptr.2d 341]; American Federation of State Etc. Employees v. County of San Diego (1992) 11 Cal.App.4<sup>th</sup> 506 [14 Cal.Rptr.2d 51] (AFSCME v. San Diego.) It is a well-recognized principle of statutory construction that when the Legislature modifies a law without substantive change after its authoritative construction by the judiciary, as is the case with changes to MMBA effected by SB 739, the Legislature is presumed to have intended the statute to be given the same construction. (See, e.g., People v. Masbruch (1996) 13 Cal.4<sup>th</sup> 1001, 1007 [55 Cal.Rptr.2d 760]; Guardianship of Stephen G. (1995) 40 Cal.App.4<sup>th</sup> 1418, 1425 [47 Cal.Rptr.2d 409]; Robinson v. Fair Employment & Housing Com. (1992) 2 Cal.4<sup>th</sup> 226, 235 [5 Cal.Rptr.2d 782]; AFSCME v. San Diego.) Not only did the Legislature decline to rebut that presumption through addition of a limitations period in SB 739, it expressly mandated that PERB is to construe MMBA “in a manner consistent with and in accordance with judicial interpretations of this chapter.” (MMBA sec. 3510(a).) As discussed above, those judicial interpretations included and continue to include a three-year limitations period.

The foregoing is further corroborated by the fact that the Dills Act, EERA, and HEERA each expressly contain a six-month limitations period and none of those statutes relies on or refers to the others for its limitations period. (EERA sec. 3541.5(a)(1), HEERA sec. 3563.2(a), and Dills Act sec. 3514.5(a).) In contrast, the Legislature did not specify a statute of limitations when it amended the MMBA. While the Legislative history specifically references

and applies PERB's powers and duties under EERA section 3541.3<sup>13</sup> to the MMBA, nothing in that section or any other provision references or applies the EERA's statute of limitations to the MMBA. EERA's statute of limitations provision is found in EERA section 3541.5, not section 3541.3. Nothing in the Legislative history of SB 739 refers to EERA section 3541.5, nor is there any reference to the statutory limitations period for either the Dills Act or HEERA.

Accordingly, the limitations period applicable to MMBA cases is three years and the allegations at issue in this case were timely.

### Retroactivity

The City argues that PERB's jurisdiction is not retroactive to before July 1, 2001, because new statutes are presumed to operate prospectively "absent an express declaration of retrospectivity [sic] or a clear indication that the Legislature intended otherwise." The City asserts that the Legislature evinced no such intent with SB 739 but, rather, evinced a contrary intent by amending the bill late in the process of its development to specify the July 2001 effective date and to make the change of jurisdiction contingent on appropriation of funds.

The City also contends that SB 739 was more than a procedural statute but that it affects the parties' substantive rights as well by, for example, granting PERB the authority to review arbitrators' awards, as well as investigate, issue complaints regarding, and decide unfair practice charges under the MMBA. This "constitutes a significant change in the way charges of unfair practice are to be handled within entities covered by the MMBA," argues the City, enabling the Board "to affect the substantive rights of the parties by imposing remedies, determining the matter on the merits, and deciding whether or not an unfair practice charge

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<sup>13</sup> MMBA section 3509(a) states "[t]he powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c)."

may be filed.” Thus, argues the City, SB 739 allows the Board to intrude itself into the parties’ relationship and permits the union to “resurrect” an abandoned grievance which would otherwise be barred by contractual timelines.

The Board rejects the City’s argument because: (1) SB 739 effected a transfer of forum for adjudication of disputes arising under the MMBA, not a change in substantive rights conferred by that statute; and, (2) adoption of the City’s argument would leave parties with unfiled MMBA claims based on conduct occurring between July 1, 1998 and July 1, 2001 without any remedy.

In Myers v. Philip Morris Companies, Inc. (2002) 28 Cal.4<sup>th</sup> 828, 839 [123 Cal.Rptr.2d 40] (Myers), the Court provided the following definition of retroactive application:

[A] retroactive or retrospective law “is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.” (Citations.) Similarly, the United States Supreme Court has stated: “[E]very statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective.” (Citing Landgraf v. USI Film Products (1994) 511 U.S. 244, 269.)

Phrased another way, a statute that operates to “increase a party’s liability for past conduct” is retroactive. (Id. at p. 280; Evangelatos v. Superior Court (1988) 44 Cal.3d 1188, 1206 [246 Cal.Rptr. 629].) As PERB’s assumption of jurisdiction over violations of the MMBA neither impairs parties’ vested rights nor increases a party’s liability for past conduct, the statute is not being applied retroactively.

With the enactment of SB 739, PERB was granted exclusive jurisdiction over a public sector labor relations statute that had been in existence for over thirty years. SB 739 changed the forum in which claims of unfair practices were to be adjudicated, not the substantive law

governing such claims.<sup>14</sup> The bill did not increase a party's liability under the MMBA, nor did it impose any new obligations on the employers or employee organizations.

SB 739 did not render the City potentially liable for actions that were lawful prior to July 1, 2001. The City argues that, "the Board has the authority to affect the substantive rights of the parties by imposing remedies, determining the matter on the merits, and deciding whether or not an unfair practice charge may be filed." However, as noted above, PERB is required to interpret and enforce the MMBA in accordance with existing judicial interpretations of the statute. Thus, SB 739 did not effect a change in substantive rights, it effected a change in the venue within which those substantive rights are adjudicated.

Moreover, were the City's argument against retroactivity accepted, the purposes of MMBA would be thwarted because violations of the statute would go unremedied. PERB was granted exclusive jurisdiction over MMBA charges effective July 1, 2001. Thus, beginning on July 1, 2001, parties no longer had the option of filing MMBA claims in court. The results of the City's argument would potentially be extreme. For example, parties who suffered a violation of rights under the MMBA on June 30, 2001, would, under settled law, have had three years to file a complaint. On the City's theory, were such parties to have waited until the following day, July 1, 2001, to file their complaints, their rights would have been forfeited. SB 739 gave PERB exclusive jurisdiction over MMBA charges beginning July 1, 2001, so parties would no longer have been able to pursue a complaint in court. If PERB had no jurisdiction over MMBA claims based on events occurring before July 1, 2001, then the parties

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<sup>14</sup> The Legislature also modified the MMBA's agency fee provisions. However, as these sections created a new legal obligation, they have been applied only prospectively, and are not at issue in this case.

would have been unable to file a charge with PERB and, consequently, would be left without a forum to pursue their rights under the MMBA.

The Board cannot endorse such a retroactive repeal of the substantive rights and duties established by the MMBA. (See AFSCME v. San Diego, at p. 514, “there is a presumption against repeals by implication.”) There is nothing in the text of SB 739 to suggest the Legislature intended such a severe abolishment of settled rights and obligations. To the contrary, unambiguous statutory text requires PERB to apply the MMBA in accordance with existing judicial interpretations. PERB’s jurisdiction over MMBA claims arising prior to July 1, 2001, is required in order to avoid harm to the rights and expectations of parties subject to MMBA jurisdiction. The Board would be derelict in its responsibility to effectuate the purposes of the MMBA were it to find that it had no present ability to adjudicate charges based on alleged conduct occurring prior to July 1, 2001.

Finally, the Board finds no merit in the City’s assertion that addition “late in the process” of subsections (f) and (g) to Section 3509<sup>15</sup> “strengthens the argument that the Legislature intended that the legislation not be retroactively applied.” The text of the bill and its interpretation by the Legislative Counsel<sup>16</sup> (as well as the City’s argument itself<sup>17</sup>) show that the amendments were designed to ensure there was adequate funding in the 2001-2002

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<sup>15</sup> Subsections (f) and (g), which were added by SB 739, were deleted through enactment of A.B. 2908 in September 2002 and a new subsection (f) was simultaneously enacted on a different subject. (Chap. 1137, Stats. of 2002.) However, that change does not affect the Board’s analysis.

<sup>16</sup> It is reasonable to presume the Legislature acted with the intent and meaning expressed in the Legislative Counsel’s Digest. (People v. Van Buren (2001) 93 Cal.App.4<sup>th</sup> 875 [113 Cal.Rptr.2d 510].)

<sup>17</sup> The City asserts that the amendments “were inserted in the wake of concerns expressed regarding the cost of implementing Senate Bill 739.”

budget for the expansion of PERB's adjudicatory and administrative responsibilities. MMBA section 3509(f) and (g) states that implementation of the amendments to the MMBA regarding PERB were subject to the appropriation of funds in the annual Budget Act. The Legislative Counsel's Digest of those subsections states that the Legislature intended to "provide that implementation of this provision is subject to the appropriation of funds for this purpose in the annual Budget Act and that the provision becomes operative on July 1, 2001."<sup>18</sup> On their faces and as authoritatively explained by the Legislative Counsel, subsections (f) and (g) were designed to allow the Governor adequate time to appropriately modify PERB's annual budget. Such fiscal necessities do not evince an intent to disturb settled expectations by precluding PERB from adjudicating disputes regarding conduct occurring prior to July 1, 2001.

#### Exhaustion of Contractual Remedies

The City's argument that IBEW was required to exhaust contractual remedies, up to and including filing a judicial action to compel arbitration, prior to filing an unfair practice charge with PERB lacks merit. Neither the MMBA nor PERB's regulations contain a requirement that contractual remedies be exhausted before filing an MMBA charge with PERB.

Moreover, the City's argument that IBEW's charge should be barred because PERB cannot issue a complaint concerning conduct prohibited by the parties' agreement is undercut by the fact that the City stated in writing to the Board agent "that the City does not believe that deferral of the above matter to arbitration is appropriate and is not willing to submit this dispute to arbitration." The City asserted consistently that IBEW's grievance was not

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<sup>18</sup> The Legislative Counsel's Digest of SB 739 (Sec. 2.)

arbitrable. The City will not now be heard to claim that IBEW's charge is barred by failure to exhaust the very grievance machinery the City refused to allow IBEW to invoke.

### Laches

Laches is an equitable doctrine that bars unreasonable delay in the assertion of a right, causing prejudice to the party against whom the right is asserted. (In Re Marriage of Plescia (1997) 59 Cal.App.4<sup>th</sup> 252, 256 [69 Cal.Rptr.2d 120].) Passage of time alone is insufficient to establish that a claim is barred by the doctrine of laches. (Ibid.) The party invoking the defense must prove both that the passage of time was unreasonable and that it caused prejudice to the party invoking the defense. (Id.; In Re Marriage of Dancy (2000) 82 Cal.App.4<sup>th</sup> 1142, 1159 [98 Cal.Rptr.2d 775]; Wells Fargo Bank v. Bank of America (1995) 32 Cal.App.4<sup>th</sup> 424, 438 [38 Cal.Rptr.2d 521].)

The City's laches argument is based on the claim that IBEW unreasonably delayed resolution of this case by failing to timely amend its grievance or file a judicial action to compel arbitration.

As IBEW was not required to exhaust administrative remedies before filing an MMBA charge, the City unequivocally communicated its belief that the charge was not grievable, and given that a three-year statute of limitations applies to MMBA charges before PERB, there is nothing in the record to support a claim that the approximately 11-month time period between the discharge and filing of the charge in the instant case was unreasonable or caused prejudice to the City. Accordingly, there is no basis for dismissal of IBEW's charge under the equitable doctrine of laches.

## CONCLUSION

The Board rejects the City's argument that a six-month limitations period applies to MMBA charges before PERB. The Board also rejects the City's contention that PERB lacks jurisdiction over MMBA charges based on events occurring prior to July 1, 2001, because (1) SB 739 effected a change of forum, not substantive rights; and, (2) the City's approach would divest parties of judicially settled rights and expectations, in direct conflict with express legislative mandate. The Board finds that the City's remaining arguments lack merit. Based on the foregoing, the Board denies both the interlocutory appeal and the motion for stay and remands the matter for further processing of the complaint.

## ORDER

Based on the foregoing discussion, the Board denies the City of Anaheim's (City) appeal of the Board agent's interlocutory order refusing to dismiss the charge filed by the International Brotherhood of Electrical Workers, Local 47 and the Board agent's issuance of the complaint on November 30, 2001. The City's motion to stay processing of the complaint is denied.

It is hereby Ordered that Case No. LA-CE-6-M be REMANDED to the Board agent for further processing of the complaint.

Members Baker and Whitehead joined in this Decision.