STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF COMPTON, Employer, and AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES LOCAL 3947, Exclusive Representative.	Case No. LA-IM-324-M PERB Order No. Ad-506-M November 6, 2023

Appearances: Atkinson, Andelson, Loya, Rudd & Romo by Jabari Willis, Attorney, for City of Compton; Rothner, Segall & Greenstone by Daniel B. Rojas, Attorney, for American Federation of State, County & Municipal Employees Local 3947.

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the City of Compton from an administrative determination by PERB's Office of the General Counsel (OGC) approving a request by the American Federation of State, County & Municipal Employees Local 3947 (AFSCME) pursuant to the Meyers-Milias-Brown Act (MMBA) that the parties' bargaining differences be submitted to a factfinding panel.[1]

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

Having reviewed the record, we agree with OGC that AFSCME's factfinding request must be granted. We therefore affirm the administrative determination for the reasons set forth below.

BACKGROUND

AFSCME is the exclusive representative of a bargaining unit that includes the City's "White Collar, Technical employees." The City and AFSCME are parties to a memorandum of agreement (MOA) that expired on June 30, 2019. The parties began successor MOA negotiations on January 15, 2020. The parties reached tentative agreements on some articles, but not others. Via an e-mail on May 31, 2023, AFSCME advised the City that it rejected several City proposals and provided the City with a written declaration of impasse.[2] On June 1, the City advised AFSCME that it believed the parties had not reached an impasse and that AFSCME had inappropriately rejected proposals on nine outstanding articles because of a dispute over one article, compensation. The City also offered additional dates to bargain over those outstanding articles.

On June 1, AFSCME filed its request with PERB for MMBA factfinding. On June 2, AFSCME filed a copy of the May 31 e-mail message to the City declaring impasse in the parties' MOA negotiations. On June 5, the City opposed AFSCME's factfinding request, asserting that the parties had not yet reached impasse, and therefore, the request was inappropriate and premature. The City also made several related arguments, including that impasse refers to an overall deadlock in negotiations rather than a deadlock on just one out of multiple issues subject to bargaining.

[2] All further dates are in 2023.

AFSCME did not file a response. On June 8, OGC issued its administrative determination approving AFSCME's factfinding request. On June 16, the City filed its appeal of the administrative determination, again asserting that though the factfinding request was timely, it was insufficient because the parties are not actually at impasse.[3] ASFCME filed its opposition to the appeal on June 21.

DISCUSSION

MMBA section 3505.4, subdivision (a) provides, in relevant part:

> "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

[3] Concurrent with its appeal of the administrative determination on June 16, the City filed a request to stay proceedings pending the Board's determination on the appeal. AFSCME filed its opposition to the request for stay the same day. The Board denied the stay request on June 19.

> mediation process required by a public agency's local rules; or
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> "(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."

"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." (*County of Santa Clara* (2020) PERB Order No. Ad-483-M, p. 4, citing *City of Oakland* (2018) PERB Order No. Ad-462-M, p. 4.) PERB does not evaluate whether the parties are in fact at impasse. (*County of Santa Clara*, *supra*, PERB Order No. Ad-483-M, p. 4.) 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.) Instead, 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. (*County of Santa Clara*, *supra*, PERB Order No. Ad-483-M, p. 4, quoting *Santa Cruz Central Fire Protection District* (2016) PERB Order No. Ad-436-M, p. 5 (*Santa Cruz*).)

It is undisputed that AFSCME gave the City a written declaration of impasse on May 31 and filed its factfinding request with PERB within 30 days of the impasse declaration, thereby satisfying the procedural requirements under MMBA section 3505.4, subdivision (a) and PERB Regulation 32802, subdivision (a)(2).[4] The

[4] There is no indication that either party initiated a mediation process.

City contends, however, that PERB should have denied AFSCME's factfinding request as premature because the parties were not actually at impasse.

In support of this argument, the City cites to *County of Contra Costa* (2014) PERB Order No. Ad-410-M (*Contra Costa*), for the proposition that PERB has determined that "[i]mplicitly contained within the authority to determine whether the request is sufficient is the jurisdiction to also assess whether the request is properly before [PERB], i.e. whether the conditions precedent to a valid request for fact-finding exist." (*Id*. at p. 11.) The City does not further explain how this precedent supports its appeal. We find that it does not.[5]

The pertinent question in *Contra Costa*, *supra*, PERB Order No. Ad-410-M, was one of jurisdiction; the Board ultimately concluded that the MMBA's factfinding procedures apply to any bargaining impasse over negotiable terms and conditions of employment, and not only to impasses over new or successor memoranda of understanding. (*Id*. at p. 3.) *Contra Costa* specifically noted that resolving this question did not involve any alleged violation of the MMBA. (*Id*. at pp. 12-13.) In contrast, issues of whether a party bargained in bad faith, including whether a party properly declared impasse, must be decided through unfair practice proceedings.[6] (See *City of*

[5] The City also argues that its appeal is further supported by the requirement in PERB Regulation 32802, subdivision (a) that a factfinding request "be accompanied by a statement that the parties have been unable to effect a settlement." We find this requirement easily met by AFSCME's impasse declaration, issued to the City on May 31 and filed with PERB on June 2.

[6] On June 13, the City filed an unfair practice charge, PERB Case No. LA-CO-280-M, alleging that AFSCME's negotiations conduct, including its impasse declaration, constitutes a failure to bargain in good faith. OGC issued a complaint on July 28, and on August 14 AFSCME answered the complaint, denying

Folsom (2015) PERB Order No. Ad-423-M, pp. 5-6.) "PERB's unfair practice proceedings are better suited to resolving the often complex legal and factual issues raised by unfair practice allegations and for protecting the parties' rights to notice and meaningful opportunity to be heard before issues of liability are decided." (*Id*. at p. 6, citing *City and County of San Francisco* (2014) PERB Order No. Ad-415-M, pp. 13-14.) PERB has reiterated on multiple occasions that in resolving a request for factfinding, it does not evaluate whether the parties are in fact at impasse. (See, e.g., *County of Santa Clara*, *supra*, PERB Order No. Ad-483-M, p. 4; *City of Salinas* (2018) PERB Order No. Ad-457-M, p. 6; *Santa Cruz*, *supra*, PERB Order No. Ad-436-M, pp. 6-7.) The City's appeal fails to establish any reason *Contra Costa* suggests a different result.

Because AFSCME filed its factfinding request with PERB the day after declaring impasse, and the next day filed a copy of its impasse declaration, OGC correctly concluded that the request was timely under MMBA section 3505.4 and PERB Regulation 32802 and procedurally proper.

ORDER

The appeal of the City of Compton is DENIED and the administrative determination in Case No. LA-IM-324-M is affirmed.

Chair Banks and Member Krantz joined in this Decision.

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the substantive allegations. As of this writing, that matter remains pending.