

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/31/2014

TIME: 08:30:00 AM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Kim Mulligan

REPORTER/ERM: Regina Garrison CSR# 12921

BAILIFF/COURT ATTENDANT: A. Salvador

CASE NO: **37-2012-00087278-CU-WM-CTL** CASE INIT.DATE: 12/10/2012

CASE TITLE: **San Diego Housing Commission vs. Public Employment Relations Board [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

APPEARANCES

Charles B Christensen, counsel, present for Petitioner(s).

Joel B. Mason, counsel, present for Petitioner.

Wendi L. Ross, counsel, present for Respondent.

Ronald R. Pearson, counsel, present for Respondent.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

The court addresses the evidentiary issues. Petitioner San Diego Housing Commission's request for judicial notice is granted. Respondent, Public Employment Relations Board's objections to the Commission's request for judicial notice are overruled. Even if the court were to sustain PERB's objections, the objected to legislative materials are contained within the documents of which PERB seeks judicial notice. PERB's request for judicial notice is granted. The Commission's objections to PERB's request for judicial notice are overruled. PERB's objections to evidence submitted by the Commission are overruled.

The court then rules as follows. Petitioner San Diego Housing Commission's motion for summary judgment is granted.

The parties agree that the material facts are undisputed. The labor relations between the Commission and Real Party in Interest, Service Employees International Union, Local 22 (SEIU), are governed by the Meyers-Milias-Brown Act (Government Code § 3500, et seq.) (MMBA), the Memorandum of Understanding (MOU) between the Commission and SEIU and by the Commission's Employee Relations Policy (ERP) [SSUMF 4]; on or about November 1, 2012, SEIU made a written request for factfinding under the MMBA to Respondent, Public Employment Relations Board (PERB) [SSUMF 12]; the SEIU made its written request for factfinding in the context of a meet and confer session about the

impacts and effects of Commission layoffs in its Workforce & Economic Development area, not in the context of negotiations over a MOU [SSUMF 13]; on or about November 12, 2012, the Commission sent a written response to PERB objecting to SEIU's written request for factfinding [SSUMF 14]; by letter dated November 13, 2012, PERB informed the Commission and SEIU that it rejected the Commission's objection to factfinding [SSUMF 15].

The parties also agree that resolution of this motion is purely a question of law, specifically, interpretation of the MMBA. As stated in *Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, interpretation of statutes such as the MMBA

"falls squarely within PERB's legislatively designated field of expertise. Under established principles, PERB's construction is to be regarded with deference by a court performing the judicial function of statutory construction, and will generally be followed unless it is clearly erroneous. [Citations.]" (*San Mateo City School Dist. v. Public Employment Relations Bd.*, *supra*, 33 Cal.3d 850, 856.) **"It is, however, 'the duty of this court, when ... a question of law is properly presented, to state the true meaning of the statute ... even though this requires the overthrow of an earlier erroneous administrative construction.'** (*Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935].)" (*Gibson v. Unemployment Ins. Appeals Bd.* (1973) 9 Cal.3d 494, 498, fn. 6 [108 Cal.Rptr. 1, 509 P.2d 945].)

Cumero, 49 Cal.3d at 586-587.

The court finds that PERB's construction that the factfinding provisions of the MMBA apply to an impasse arising out of negotiations other than for a MOU, including an impasse in a dispute over the effects and impacts of an employee layoff, is clearly erroneous. Applying the standard rules of statutory construction [see, *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 718; *Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340] the court finds the language of the statute clear and that, by its terms, MMBA factfinding requirements only apply to an impasse in a dispute arising from the negotiation of a new or successor MOU.

The statute at issue, Government Code § 3505.4 [Added by Stats.2011, c. 680 (A.B.646), § 2] provides, in part,

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by **all** the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

These criteria reflect considerations specific to the negotiation of a MOU. Applying these criteria, all of which must be considered by the factfinder, to disputes other than those arising from negotiation of a MOU, is incongruous. PERB fails to articulate how any of these criteria would apply to a dispute over the effects and impacts of an employee layoff, or how these criteria would apply to any dispute other than a dispute arising from negotiation of a MOU.

The provisions of § 3505.7 support this construction. § 3505.7 provides:

After **any applicable mediation and factfinding** procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, **but shall not implement a memorandum of understanding**. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

Had the Legislature intended that factfinding apply to *all* meet and confers between the public agency and the union, it would not have used the words "*any applicable*" – such words would have been unnecessary. Also, the Legislature specifically allows a public agency to impose "its last, best, and final offer" but prohibits a public agency from implementing a MOU. This language reflects Legislative intent that factfinding apply only to an impasse arising from negotiation of a MOU.

PERB's interpretation that the MMBA allows SEIU to compel factfinding to disputes other than those arising of the negotiation of a MOU, would lead to absurd and unintended results. Such interpretation would require the factfinder to evaluate all of the § 3505.4(d) criteria in addressing disputes in which evaluation of the enumerated criteria would have no relationship to the dispute (e.g., a dispute over an employee layoff).

The court is not persuaded by PERB's reliance on the application of statutory factfinding to instances of impasse not arising from negotiations for a MOU under the Educational Employment Relations Act and the Higher Education Employer-Employee Relations Act. The court finds the differences in the treatment of impasse and factfinding under MMBA when compared with the impasse and factfinding provisions of the EERA and HEERA precludes application of the same analysis as urged by PERB. For instance, under the EERA and HEERA factfinding is subject to the determination of appropriateness by the mediator, but under the MMBA factfinding is an exclusive right of the union (compare Government Code §§ 3548.1(a) and 3505.4(a)) and under the EERA and HEERA costs related to factfinding are absorbed by PERB, while under the MMBA the parties must pay the costs (compare Government Code §§ 3548.3(b) and 3505.5(b)). Given the more onerous burdens placed on the public agency under the MMBA, application of factfinding to an impasse not arising from negotiations for a MOU under the EERA and HEERA does not compel the same result under the MMBA.

Nor is the court persuaded by PERB's reliance on the change in language of § 3505.4(a) from the applicable 2011 amendment (A.B. 646) to the 2012 amendment (A.B. 1606 effective January 1, 2013). The current language and the related legislative history is irrelevant to the analysis of the language applicable to the Commission's petition. The 2012 amendment does not change the language of § 3505.4(d) relating to the criteria to be evaluated by the factfinder. Also, nothing in the new language indicates that factfinding applies to an impasse other than an impasse arising from negotiation of a

MOU.

The court is not persuaded by case law relating to the National Labor Relations Act because none of the authorities PERB cites discuss interpretation and application of factfinding under the MMBA. Similarly, the court is not persuaded by PERB's reliance on prior factfinding panel reports. Such reports have no relevance to the legal issue presented on this motion.

PERB fails to provide authority allowing for the retroactive application of PERB Regulation 32802(2), as revised effective October 1, 2013, to the dispute now before the court. Absent such authority, there is no basis to find that the Commission failed to exhaust its administrative remedies.

As set forth above, the court issues this ruling based solely on the court's interpretation of the statutory language of the MMBA). The court has not considered the legislative history or any of the other materials the parties submit in interpreting the MMBA. Even if the court were to consider legislative history, the result would not change. The court would find the legislative history consistent with the construction given by the court (i.e., factfinding applies only to an impasse arising from negotiation of a memorandum of understanding).

The Court directs counsel to prepare an order and judgment.

Future trial dates are vacated.

The Trial Readiness Conference (Civil) set for 02/28/14 at 9:30 AM is vacated.

The Civil Court Trial set for 03/07/14 at 9:30 AM is vacated.

IT IS SO ORDERED.



Judge Ronald L. Styn