STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 221, Charging Party, v. CITY OF CALEXICO, Respondent.	Case No. LA-CE-987-M PERB Decision No. 2541-M October 20, 2017

Appearances: Smith, Steiner, Vanderpool & Wax by Fern M. Steiner, Attorney, for Service Employees International Union, Local 221; Liebert Cassidy Whitmore by Jeffrey C. Freedman, Christina C. Rentz and James P. Van, Attorneys, for City of Calexico.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on the City of Calexico's (City) exceptions to a proposed decision (attached) by a PERB administrative law judge (ALJ). The ALJ concluded that the City violated the Meyers-Milias-Brown Act (MMBA)[1] by unilaterally changing employees' pay period from a Wednesday through Tuesday schedule to a Sunday through Saturday schedule, without affording Service Employees International Union, Local 221 (Local 221) notice and an opportunity to bargain.

Although the Board's review of exceptions is de novo, it need not address arguments that have been adequately addressed by the ALJ. (*Los Angeles Unified School District* (2015)

[1] The MMBA is codified at Government Code section 3500 et seq.

PERB Decision No. 2432, p. 2.) The City's exceptions in this case repeat arguments that were rejected by the ALJ. We review them briefly.

Two of the City's exceptions (Nos. 4 and 6) challenge the ALJ's conclusion that the Wednesday through Tuesday pay period was the City's existing policy. However, as the proposed decision explains, the City admitted paragraph 3 of the complaint, which alleged: "Before November 4, 2014, [the City's] policy or past practice for pay periods of Unit members (including, Water Plant Operators) was that they began on Wednesday and ended on Tuesday." Thus, the City conclusively admitted this fact, removing it from the issues in controversy. (See *County of San Luis Obispo* (2015) PERB Decision No. 2427-M, p. 27.) The City's exceptions offer no basis for relieving it of its admission. (*Regents of the University of California* (2012) PERB Decision No. 2302-H, proposed decision at p. 14.)

The remainder of the City's exceptions argue that the City was not required to bargain over the change to the pay period because it was "incidental" to the City's decision to change its time clock and payroll system, which was itself an exercise of the City's management rights under the parties' memorandum of understanding (MOU). With respect to the City's argument regarding the management rights clause, the ALJ relied on recent Board case law to conclude that: (1) the clause was not specific enough to demonstrate that SEIU waived its right to bargain over this subject, citing *Rocklin Unified School District* (2014) PERB Decision No. 2376; and (2) that any waiver of the right to bargain would have expired along with the MOU, approximately four months before the City made the disputed change in this case, citing *Stanislaus Consolidated Fire Protection District* (2012) PERB Decision No. 2231-M. The City's exceptions make no attempt to challenge this precedent or distinguish it based on the facts of this case.

With respect to the argument that the change to the pay period was incidental to the change to the time clock system, the ALJ found "no evidence explaining why the City's changes [to] its time-clock and payroll systems required a corresponding change to the employees' pay periods." (Proposed Decision, p. 11.) The ALJ also concluded that even if the change to the pay period was merely an "effect" of the change to the time-clock and payroll system, the City was required, but failed, to give notice and an opportunity to bargain over that effect, citing, *Rio Hondo Community College District* (2013) PERB Decision No. 2313. The City's exceptions do not cite any evidence that the change to the pay period was necessitated by the change to the time clock system, or that the City gave SEIU notice and an opportunity to bargain over the negotiable effects of its purportedly non-negotiable decision.

The City has raised no issues of fact, law, or procedure warranting Board review. We find the ALJ's findings of fact are adequately supported by the record and his conclusions of law are well-reasoned and in accordance with applicable law. Therefore, we hereby adopt the proposed decision as the decision of the Board itself.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the City of Calexico (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3505, 3506, and 3506.5, subdivisions (a), (b), and (c); and Public Employment Relations Board (PERB) Regulation 32603, subdivisions (a), (b), and (c) (Cal. Code Regs., tit. 8, § 31001 et seq.). The City violated the MMBA by unilaterally changing employees' pay period from a Wednesday through Tuesday schedule to a Sunday through Saturday schedule.

Pursuant to the MMBA, Government Code section 3509, subdivision (b), it hereby is ORDERED that the City, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally implementing policies within the scope of representation.

2. Interfering with Service Employees International Union, Local 221's (Local 221) right to represent its members.

3. Interfering with employees' right to be represented by Local 221.

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

1. Rescind the unilaterally adopted Sunday through Saturday pay period for the Certified Operators bargaining unit.

2. Compensate employees in the Certified Operators unit for any financial losses incurred as a direct result of all unilaterally implemented pay period. Any financial losses should be augmented by interest at a rate of 7 percent per annum.

3. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the Certified Operators bargaining 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 thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. The Notice shall also posted by electronic message, intranet, internet site, and other electronic means customarily used by the City to communicate with employees in the Certified Operators bargaining unit.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB, or the General Counsel's designee. Respondent 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 Local 221.

Chair Gregersen and Member Banks joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 221, Charging Party, v. CITY OF CALEXICO, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-987-M PROPOSED DECISION (May 24, 2016)

Appearances: Smith, Steiner, Vanderpool & Wax APC, by Fern Steiner, Attorney, for Service Employees International Union, Local 221; Liebert Cassidy Whitmore, by Jeffrey C. Freedman and Christina C. Rentz, Attorneys, for City of Calexico

Before Eric J. Cu, Administrative Law Judge.

In this case, an exclusive representative accuses a public agency employer of violating the Meyers-Milias-Brown Act (MMBA) and Public Employment Relations Board (PERB or Board) Regulations by unilaterally changing represented employees' pay period.[1] The employer denies any violation.

PROCEDURAL HISTORY

On February 19, 2015, Service Employees International Union, Local 221 (Local 221) filed the instant unfair practice charge accusing the City of Calexico (City) of two unilateral changes. On June 18, 2015, Local 221 withdrew its claims relating to when City employees observed a State holiday. The next day, the PERB Office of the General Counsel issued a complaint on Local 221's behalf, claiming that the City unilaterally changed employees' pay

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

period from a Wednesday through Tuesday schedule to a Sunday through Saturday schedule. On July 14, 2015, the City filed its answer, admitting both that the Wednesday through Tuesday pay period was a policy or past practice and that it issued a memo to employees about pay periods, but denying all other substantive allegations. It also raised affirmative defenses.

An informal settlement conference was held on September 8, 2015, but the case did not settle. On February 8, 2016, the case was transferred from Chief Administrative Law Judge (ALJ) Shawn Cloughesy to ALJ Eric J. Cu, after hearing no objection from the parties. A formal hearing took place on February 16, 2016. The parties filed closing briefs on April 18, 2016. At that point, the record was closed and the matter was submitted for decision.

FINDINGS OF FACT

The Parties

The City is a "public agency" within the meaning of MMBA section 3501, subdivision (c), and PERB Regulation 32016, subdivision (a). Local 221 is an "exclusive representative" within the meaning of PERB Regulation 32016, subdivision (b). Local 221 represents the Certified Operators bargaining unit with around 18 employees, including those in the Water Treatment Plant Operator (WTP Operator) position.

The Parties' Expired MOU

Local 221 and the City were parties to an expired Memorandum of Understanding (MOU). Under Article 18, Section 3, "[t]he term of the MOU shall be July 1, 2013 through June 30, 2014. The provisions of this MOU shall be retroactive to July 1, 2012."

Article 2, entitled "MANAGEMENT RIGHTS," states:

> The City possesses the sole right to operate City government and all management rights repose in it, and such rights will be exercised consistently with the provisions of the MOU, Federal and State Laws and Regulation.

Article 4 governs employee work schedules and specified that WTP Operators worked seven consecutive days followed by seven days off (7 days on/7 days off). Article 4, Section 4, states that "[t]he City shall not change working hours or shift assignments of employees or positions except for lawful purposes in the exercise of its management rights."

Article 5 governs compensation and overtime. Section 1 states that "[t]he City's work week begins Wednesday at 12:00 a.m. and ends on 11:59 p.m., on Tuesday." Section 2 states that "[t]he City uses a 40-hour work week standard to calculate FLSA overtime pay for Waste/Water Plant Operators. FLSA[2] overtime pay is compensated at 1.5 times the employer's regular hourly rate of pay." These policies were in place for at least 10 years.

Article 7 contains a grievance procedure culminating in advisory arbitration.

The Payroll Schedule Memo

On November 4, 2014, City Finance Director John Quinn issued a memo to all its employees entitled "Payroll Schedule." In the memo, Quinn announced the creation of a new paperless, biometric, time-clock system with new payroll software. Quinn also stated that the City was moving from its Wednesday through Tuesday pay period to a Sunday through Saturday pay period, effective December 7, 2014. Local 221 was not notified beforehand.

Prior to the issuance of this memo, WTP Operators' pay periods coincided with the workweek, starting on Wednesday and ending on Tuesday. In the City's answer to the PERB complaint in this case, the City admitted to complaint paragraph 3, which states:

> Prior to November 4, 2014, [the City's] policy or past practice for pay periods of Unit members (including, Water Plant Operators) was that they began on Wednesday and ended on Tuesday.

[2] FLSA refers to the Federal Labor Standards Act.

After this change took effect, employees maintained their Wednesday through Tuesday workweek, consistent with MOU Article 2, Section 1. Similarly, WTP Operators worked a standard 7 days on/7 days off schedule in 12-hour shifts. Employees also remained entitled to overtime after working more than 40 hours per week. However, after the change the City began calculating employees' entitlement to overtime based on the new pay period, not the workweek. Prior to the change, the bulk of the hours in WTP Operators' workweek (84 hours per 7 day period) were included in a single Wednesday through Tuesday pay period. After the change, because overtime was calculated using the new Sunday through Saturday pay period, WTP Operators split the hours of their standard workweek between two separate pay periods, resulting in less overtime.

Local 221's Complaints and Grievance

On November 19, 2014, Local 221 Senior Worksite Organizer Tasha Iglesias e-mailed City Attorney Jessica Michelli expressing concern about the change in pay periods without negotiations. The two agreed to discuss the matter during an upcoming negotiation session. A few days later, WTP Operators informed Iglesias that the change in pay period reduced the amount of overtime they received. Iglesias e-mailed Michelli to inform her that four WTP Operators were denied overtime wages after the pay period change. The parties discussed the pay period issue after their January 8, 2015 bargaining session. Iglesias reiterated that WTP Operators were losing overtime as a result of the change. City Manager Richard Warne accused WTP Operators of "stacking" their overtime, meaning modifying their schedule to maximize entitlement to overtime. Iglesias stated that, if not resolved, Local 221 would file either a grievance or an unfair practice charge against the City. Michelli requested unspecified

information from Local 221. Iglesias stated that she provided that information to the City, but did not hear any response afterwards.

On January 13, 2015, Local 221 filed a grievance over the pay period change, asserting that the change resulted in 4 operators losing overtime pay. The City never provided a final response, despite Local 221's request.

ISSUE

Was the City's newly adopted pay period an unlawful unilateral change?

CONCLUSIONS OF LAW

An employer's unilateral policy changes are "per se" violations of the duty to meet and confer in good faith where the following elements are met: (1) the employer took action to change existing policy;[3] (2) the policy change concerned a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; and (4) the change has a generalized effect or continuing impact on terms and conditions of employment. (*City of Milpitas* (2015) PERB Decision No. 2443-M, p. 14, citing *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13 and *Fairfield-Suisun USD*, *supra*, PERB Decision No. 2262, p. 9.)[4]

---

[3] The Board has traditionally recognized three possible ways that to satisfy this element: (1) changes to the parties' written agreement; (2) changes to an established past practice; and (3) newly created, implemented, or enforced policies. (*Pasadena Area Community College District* (2015) PERB Decision No. 2444, p. 12, fn. 6, citing *Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262 (*Fairfield-Suisun USD*); *Grant Joint Union High School District*, *supra*, PERB Decision No. 196.)

[4] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, p. 616; *Santa Clara Valley Water District* (2013) PERB Decision No. 2349-M, p. 13, fn. 4.)

In this case, there is no dispute that changing employees' pay period resulted in WTP Operators receiving fewer overtime hours. Nor is there any dispute that the change concerns wages, a matter within the scope of representation. The Board has consistently found that the methodology used for paying employees is subject to negotiations because of its significant effect on wages. (*Laguna Salada Union School District* (1995) PERB Decision No. 1103, pp. 12-13 ["the methodology used in making wage payments, how and when employees are paid, is a matter within the scope of representation which an employer may not change unilaterally, even when the level of compensation is not at issue."]; *Jefferson School District* (1980) PERB Decision No. 133, pp. 27-28 [holding that a union's proposal to set employees' payday on the last day of every month was within the scope of representation, after concluding that "[t]hat when and how often employees are paid relates to wages seems hardly debatable."]; see also *Brawley Union High School District* (1982) PERB Decision No. 266, p. 6; *Calexico Unified School District* (1982) PERB Decision No. 265, p. 11.) The City likewise raises no arguments disputing Local 221's contention that the City moved employees to the Sunday through Saturday pay period on a continuing, ongoing basis, that the City gave no notice to Local 221 beforehand, and that City's position is that it is not required to negotiate over the change.

While the parties do disagree about whether Local 221 has satisfied the first element of the unilateral change analysis, there is no dispute over the underlying facts. The record shows that, for at least 10 years before November 4, 2014, WTP Operators' pay period coincided with their standard workweek, i.e., Wednesday to the following Tuesday. The City calculated overtime using the same schedule. The City admitted in its answer to the PERB complaint that

this was the City's policy or practice in place at the time.[5] It is furthermore uncontested that, on or around November 4, 2014, the City announced that it was moving to a Sunday through Saturday pay period and began calculating entitlement to overtime based on that new schedule as well. This is sufficient to demonstrate that the City changed existing policy.

The City's primary defense here is that it was authorized to change employees' pay period. First, it argues that the MOU allows the City to enact the changes in question. In support, the City cites to the management rights clause in MOU Article 2 and its right under Article 4, Section 4, to change working hours and shift assignments in lawful exercise of its management rights. The Board has long found that the waiver of negotiating rights must be "clear and unmistakable," demonstrating "an intentional relinquishment of the right to bargain." (*Rio Hondo Community College District* (2013) PERB Decision No. 2313 (*Rio Hondo CCD*), p. 5 (emphasis in original), citing *Amador Valley Joint Union High School District* (1978) PERB Decision No. 74, *California State Employees Assn. v. PERB* (1996) 51 Cal.App.4th 923 (*CSEA*), pp. 937-938.) This is because there is strong public policy against finding waivers based solely on inference. (*Santa Ana Unified School District* (2013) PERB Decision No. 2332, p. 28, citing *Long Beach Community College District* (2003) PERB Decision No. 1568.) Accordingly, the "burden of establishing a waiver is upon the party asserting it, whether the claimed waiver is grounded in alleged inaction, contact language, or a simple failure to demand bargaining." (*Rio Hondo CCD, supra*, p. 6.)

[5] An admission of facts in a pleading is a conclusive concession of the truth of a matter which has the effect of removing it from the issues in controversy. (*Regents of the University of California* (2012) PERB Decision No. 2302-H, proposed dec., p. 14, citing *Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030, p. 1035, *Walker v. Dorn* (1966) 240 Cal.App.2d 118, p. 120; *Blankman v. Vallejo et al*. (1860) 15 Cal. 638, p. 644.)

A union may "waive its right to negotiate a matter within the scope of representation by consciously yielding that right in a management rights clause." (*Berkeley Unified School District* (2004) PERB Decision No. 1729, warning ltr., p. 3.) To meet this standard, the contract language must "specifically reserve for management the right to take certain action or implement changes regarding the issues in dispute." (*Id.*, citing *CSEA, supra*, 51 Cal.App.4th at pp. 938-940.) A generally worded management rights clause will not be construed as a waiver of a specific right. (*Rocklin Unified School District* (2014) PERB Decision No. 2376 (*Rocklin USD*), proposed decision, pp. 39-40; *San Bernardino City Unified School District* (1998) PERB Decision No. 1270 (*San Bernardino City USD*), proposed dec., p. 57, citing *Norris School District* (1995) PERB Decision No. 1090, *Dubuque Packing Co*. (1991) 303 NLRB No. 386.) PERB has concluded that the contract must expressly confer on the employer unilateral or exclusive authority over a *specific* subject. For instance, in *San Bernardino City USD*, the Board found that an employer unilaterally changed employee sick leave policies. (*Id*. at p. 3.) In that case, the parties' contract included a "district rights" clause stating, in part, that "the adoption of policies, rules, regulations and practices shall only be limited by the specific and express terms of this agreement." (*Id*. at proposed dec., p. 57.) PERB found that "the District Rights clause to be generally worded rather than clear and specific." (*Ibid*.) PERB also noted that contract language did not mention either any leave policies or the employer's exclusive right to change policy. (*Ibid*.; see also *Los Angeles Unified School District* (2002) PERB Decision No. 1501, at p. 4.)

In *Rocklin USD, supra*, PERB Decision No. 2376, PERB reviewed contract language broadly authorizing the employer to "determine its organization; direct the work of its employees, determine the times and hours of operations, determine the kinds of levels of

services to be provided and the methods and means of providing them; establish its educational policies, goals and objectives[.]" (*Id*. at proposed dec., pp. 2-3.) The employer argued that the contact language authorized it to remove work from the bargaining unit. PERB held that this language merely "describe[d] the general authority of the [employer] to manage its operations[,]" and did not "specifically reserve to the employer the right to take certain action or implement specific unilateral changes." (*Id*. at proposed dec., pp. 39-40, citing *Lucia Mar Unified School District* (2001) PERB Decision No. 1440.)[6] In *Hacienda La Puente Unified School District* (1997) PERB Decision No. 1186 (*Hacienda La Puente USD*), PERB found that contract language authorizing the employer to "direct the work of its employees," "determine the times and hours of operation," "determine staffing patterns," and "assign" employees "limited only by the specific and express terms of this agreement" did not allow the employer to unilaterally change employee work shifts. (*Id*. at proposed dec., pp. 15, 18-19.) PERB instead found that the language did "not contain the level of specificity required under PERB law to constitute a clear and unmistakable waiver of [the union's] right to negotiate about shift changes." (*Id*. at proposed dec., p. 18.)

The Board did find a contractual waiver in *Long Beach Community College District* (2008) PERB Decision No. 1941. There, the parties' agreement gave the employer the "exclusive right" to, among other actions, "direct the work of its employees," "determine

[6] PERB did, however, conclude that the union waived the right to bargain over the change by failing to timely request bargaining after receiving timely advance notice. (*Rocklin USD*, *supra*, PERB Decision No. 2376, proposed dec., p. 42.)

staffing patterns," and "contract out work" (*Id*. at p. 4). The Board found the union expressly waived its right to bargain over the employer's use of contract labor. (*Id*. at pp. 17-18.)[7]

Here, nothing in MOU Articles 2 or 5 authorize the City to unilaterally change employees' pay periods, or otherwise alter the methodology, frequency, or timing of when employees are paid. As in *Rocklin USD, supra*, PERB Decision No. 2376 and *Hacienda La Puente USD, supra*, PERB Decision No. 1186, the MOU provisions relied upon by the City only describe the City's general authority to manage its operations. While the cited provisions might, arguably, give the City some authority over changing employee's shift assignments, that is not the type of change that occurred here. The MOU confers no specific authority over the changes at issue. Moreover, any waiver of the right to bargain contained in a contract does not survive effect after the negotiated term of that agreement. (*Stanislaus Consolidated Fire Protection District* (2012) PERB Decision No. 2231-M, pp. 14-15, citing *Antelope Valley Union High School District* (1998) PERB Decision No. 1287; see also *Regents of the University of California* (2004) PERB Decision No. 1689-H, proposed dec., p. 25, citing *Blue Circle Cement Co*. (1995) 319 NLRB 954 ["a contractual reservation of managerial discretion does not extend beyond the expiration of the contract unless the contract provides for it to outlive the contract."].) In this case, the undisputed evidence shows that the MOU expired on June 30, 2014, roughly four months before the City changed employees' pay period. Thus, any contract-based waiver of Local 221's right to bargain expired along with the MOU.

Finally, the City argues that changing its system for processing payroll was a managerial prerogative and asserts that moving the payroll period was merely incidental to that

[7] The Board found that the employer was still obligated to bargain over the effects of any plan to contract out. (*Id*. at p. 19-20.)

non-negotiable decision. This argument is unpersuasive for both factual and legal reasons. There was no evidence explaining why the City's changes its time-clock and payroll systems required a corresponding change to the employees' pay periods. Thus, the City's assertion that the pay period change was necessary lacks factual support. Even taking the City's assumptions at face value, the Board has found "[u]pon reaching a firm decision and before implementing a non-negotiable decision, an employer must give notice and bargain upon request over the reasonably foreseeable effects of that decision." (*Rio Hondo CCD*, *supra*, PERB Decision No. 2313, p. 4, citing *Trustees of the California State University* (2012) PERB Decision No. 2287-H; *Mt. Diablo Unified School District* (1983) PERB Decision No. 373.) The City changed its payroll system on November 4, 2014, without notifying Local 221 beforehand. It was aware that the payroll system changes would also alter employees' pay period, a matter within the scope of representation. And, on November 4, 2014, it expressly changed both the payroll system and employees' pay periods, without any notice or opportunity for bargaining over the latter. Therefore, these arguments are rejected.

Local 221 established all the elements of a prima facie case for a unilateral change. The City did not demonstrate that it was authorized to make the change in question unilaterally. Therefore, the City's conduct violates the duty to meet and confer in good faith in violation of MMBA sections 3505; 3506; and 3506.5, subdivisions (a), (b), and (c); as well as PERB Regulation 32603, subdivisions (a), (b), and (c). (*City of Sacramento* (2013) PERB Decision No. 2351-M, p. 38.)

REMEDY

MMBA Section 3509, subdivision (b), authorizes PERB to order "the appropriate remedy necessary to effectuate the purposes of this chapter." (*Omnitrans* (2010) PERB

Decision No. 2143-M, p 8.) This includes an order to cease and desist any unlawful conduct. (*Id*. at p. 9.) PERB's remedial authority includes the power to order an offending party to take affirmative actions to effectuate the purposes of the MMBA. (*City of Redding* (2011) PERB Decision No. 2190-M, pp. 18-19.) PERB has the authority to order the City to restore the status quo ante and rescind any unilaterally adopted policy changes. In *CSEA, supra*, 51 Cal.App.4th 923, p. 946, the court found:

> Restoration of the status quo is the normal remedy for a unilateral change in working conditions or terms of employment without permitting bargaining members' exclusive representative an opportunity to meet and confer over the decision and its effects. This is usually accomplished by requiring the employer to rescind the unilateral change and to make the employees "whole" from losses suffered as a result of the unlawful change.

(Citations omitted; see also *County of Sacramento* (2009) PERB Decision No. 2045-M, pp. 3-4, citing *County of Sacramento* (2008) PERB Decision No. 1943-M.) Here, the City unilaterally implemented a new policy by moving employees in the Certified Operators unit from a Wednesday through Tuesday pay period to a Sunday through Saturday pay period. The City is ordered to rescind this new policy and make any employees in the Certified Operators unit whole for financial losses incurred as a direct result of the City's unilateral action. Financial compensation shall be augmented with interest at a rate of 7 percent per annum. (*County of Riverside* (2009) PERB Decision No. 2090-M, p. 43.)

Finally, it is appropriate to direct the City to post a notice of this order, signed by an authorized representative of the City. It effectuates the purposes of the MMBA to inform employees that the City has acted in an unlawful manner, is required to cease and desist from such conduct, and will comply with the order. (*City of Selma* (2014) PERB Decision No. 2380-M, proposed dec., pp. 14-15.) The notice posting shall include both a physical

posting of paper notices at all places where members of the Eligibility Unit are customarily placed, as well as a posting by "electronic message, intranet, internet site, and other electronic means customarily used by the [City] to communicate with its employees in the bargaining unit." (*Centinela Valley Union High School District* (2014) PERB Decision No. 2378, pp. 11-12, citing *City of Sacramento, supra*, PERB Decision No. 2351-M.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the City of Calexico (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code Sections 3505; 3506; and 3506.5, subdivisions (a), (b), and (c); and California Code of Regulations, title 8, Sections 32603, subdivisions (a), (b), and (c). The City violated the MMBA by unilaterally changing employees' pay period from a Wednesday through Tuesday schedule to a Sunday through Saturday schedule.

Pursuant MMBA Section 3509, subdivision (b), it hereby is ORDERED that the City, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally implementing policies within the scope of representation.

2. Interfering with Service Employees International Union, Local 221's (Local 221's) right to represent its members.

3. Interfering with employees' right to be represented by Local 221.

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

1. Rescind the unilaterally adopted Sunday through Saturday pay period for the Certified Operators bargaining unit.

2. Compensate employees in the Certified Operators unit for any financial losses incurred as a direct result of all unilaterally implemented pay period. Any financial losses should be augmented by interest at a rate of 7 percent per annum.

3. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the Certified Operators bargaining 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 thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. The Notice shall also posted by electronic message, intranet, internet site, and other electronic means customarily used by the City to communicate with employees in the Certified Operators bargaining unit.

4. 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. Respondent 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 Local 221.

Right to Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960
E-FILE: PERBe-file.Appeals@perb.ca.gov

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090, 32091 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

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-987-M, *Service Employees International Union, Local 221 v. City of Calexico*, in which all parties had the right to participate, it has been found that the City of Calexico (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq., by unilaterally changing employees' pay period from a Wednesday through Tuesday schedule to a Sunday through Saturday schedule.

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

A. CEASE AND DESIST FROM:

1. Unilaterally implementing policies within the scope of representation.

2. Interfering with Service Employees International Union, Local 221's (Local 221) right to represent its members.

3. Interfering with employees' right to be represented by Local 221.

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

1. Rescind the unilaterally adopted Sunday through Saturday pay period for the Certified Operators bargaining unit.

2. Compensate employees in the Certified Operators unit for any financial losses incurred as a direct result of all unilaterally implemented pay period. Any financial losses should be augmented by interest at a rate of 7 percent per annum.

Dated: _____ CITY OF CALEXICO

By: _____
Authorized Agent

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