

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



OPERATING ENGINEERS LOCAL 3,

Charging Party,

v.

TOWN OF PARADISE,

Respondent.

Case No. SA-CE-301-M

PERB Decision No. 1906 -M

May 24, 2007

Appearance: McDonough, Holland & Allen by Julie Raney, Attorney, for Town of Paradise.

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Town of Paradise (Town) to an administrative law judge's (ALJ) proposed decision (attached). In the proposed decision, the ALJ found that the Town violated its duty to bargain in good faith under the Meyers-Milias-Brown Act (MMBA)¹ by failing to provide the Operating Engineers Local 3 with requested information on the Town's on-call policy.

The Board has reviewed the entire record in this matter, including the unfair practice charge, complaint and the Town's statement of exceptions². The Board finds the ALJ's

¹MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²The Town requested oral argument in this matter. The Board has historically denied requests for oral argument where an adequate record has been prepared, and the parties had an ample opportunity to brief and did, and the issue before the Board is sufficiently clear to make oral argument unnecessary. (United Teachers of Los Angeles (Valadez, et al.) (2001) PERB Decision No. 1453; Monterey County Office of Education (1991) PERB Decision No. 913.) These criteria are met in this case. Thus, we deny the request for oral argument.

findings of fact and conclusions of law to be free of prejudicial error and adopts 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 this case, the Board finds that the Town of Paradise (Town) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505 and 3506, and PERB Regulation 32603(a), (b) and (c).³ The Town violated its duty to negotiate in good faith with Operating Engineers Local 3 (Local 3) when it refused to provide information for Local 3 that is necessary and relevant to represent employees, in violation of MMBA section 3505, and committed an unfair practice under Section 3509(b) and PERB Regulation 32603(c). By this same conduct, the Town denied Local 3 the right to represent its members, in violation of Section 3503 and PERB Regulation 32603(b). By the same conduct, the Town interfered with the right of employees to be represented by an employee organization of their choice, in violation of Section 3506 and PERB Regulation 32603(a).

Pursuant to sections 3509(a) and 3541.3(i) of the Government Code, it is hereby ordered that the Town and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to provide Local 3 with information that is necessary and relevant to represent bargaining unit employees, including information related to the employee on-call policy.
2. Interfering with the right of bargaining unit employees to be represented by Local 3, an employee organization of their choice.

³PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

3. Denying Local 3 the right to represent bargaining unit employees.

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

1. Upon request, provide to Local 3 the information that is necessary and relevant to represent bargaining unit employees, including information relating to the employee on-call policy as requested on October 25, 2004.

2. Within ten (10) workdays following the date this decision is no longer subject to appeal, post copies of the Notice attached hereto as an Appendix at all work locations where notices to employees represented by Local 3 are customarily posted. The Notice must be signed by an authorized agent of the Town, indicating that the Town will comply with the terms herein. 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.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The Town 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 3.

Members McKeag and Neuwald joined in this Decision.

**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. SA-CE-301-M, Operating Engineers Local 3 v. Town of Paradise, in which all parties had the right to participate, it has been found that the Town of Paradise violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq., when it failed to provide the Operating Engineers Local 3 (Local 3) with information that is necessary and relevant for Local 3 to represent bargaining unit employees.

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

A. CEASE AND DESIST FROM:

1. Refusing to provide Local 3 with information that is necessary and relevant to represent bargaining unit employees, including information related to the employee on-call policy.
2. Interfering with the right of bargaining unit employees to be represented by Local 3, an employee organization of their choice.
3. Denying Local 3 the right to represent bargaining unit employees.

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

1. Upon request, provide to Local 3 the information that is necessary and relevant to represent bargaining unit employees, including information relating to the employee on-call policy as requested on October 25, 2004.

Dated: _____

TOWN OF PARADISE

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.

**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD**



OPERATING ENGINEERS LOCAL 3,

Charging Party,

v.

TOWN OF PARADISE,

Respondent,

UNFAIR PRACTICE
CASE NO. SA-CE-301-M

PROPOSED DECISION
April 13, 2006

Appearances: Weinberg, Roger & Rosenfeld, by Matthew J. Gauger, Attorney, for Operating Engineers Local 3; McDonough Holland & Allen, by Julie Raney, Attorney, for Town of Paradise.

Before Bernard McMonigle, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union contends that the employer improperly refused to provide requested information that is necessary and relevant for representing employees. The employer defends on grounds that the requested information was relevant only to a grievance that had already been resolved.

Operating Engineers Local 3 (Union) filed with the Public Employment Relations Board (PERB or Board) an unfair practice charge against the Town of Paradise (Town or Employer) on December 23, 2004. On August 29, 2005, the PERB Office of the General Counsel issued a complaint against the Town. The complaint alleges that, by refusing to provide the requested information, the Town violated its obligation to meet and confer under the Meyers-Milias-Brown Act (MMBA or Act) at section 3505, employee rights at section 3506, and employee organization rights at section 3503.¹ The complaint also alleges that this conduct violates PERB regulation 32603(c), (a) and (b).²

¹ MMBA is found at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3505 provides

The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding

The Town answered the complaint on September 16, 2005, generally denying all allegations and asserting affirmative defenses.

A settlement conference was conducted by a board agent on September 20, 2005, but the dispute was not resolved. The undersigned conducted a hearing in Sacramento on January 12, 2006. With the receipt of the final briefs on March 3, 2006, this matter was submitted for a proposed decision.

FINDINGS OF FACT

wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet and confer in good faith" means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.

² PERB regulation 32603 provides in relevant part:

It shall be an unfair practice for a public agency to do any of the following:

(a) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.

(b) Deny to employee organizations rights guaranteed to them by Government Code section 3503, 3504.5, 3505.1, 3505.3, 3507.1, 3508(d) or 3508.5 or by any local rule adopted pursuant to Government Code section 3507.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 3505 or any local rule adopted pursuant to Government Code section 3507.

Kevin Peppas is a maintenance worker in the Public Works Department for the Town of Paradise. His normal work schedule is Monday through Thursday from 7:00 a.m. to 5:00 p.m. Peppas and other public works employees rotate on-call status for matters that need to be handled outside normal work hours. The week of September 13 to 20, 2004, was Peppas' turn in the rotation. Upon reporting to work on Monday, September 20, he learned that, over the weekend, a stop sign had been broken and a policeman had placed a temporary sign on a barricade. Peppas had not been called to repair the sign during his on-call shift.

The memorandum of agreement (MOU) between the parties expired June 30, 2003. Section 5.3 of the MOU provides for employees to be paid \$1.05 per hour for each hour of their on-call assignment. Section 5.4 provides a minimum of three hours at time and a half pay if required to work while serving on-call status.

In September and October 2004, the parties were negotiating for a new agreement. On-call assignments were one of the issues under discussion.

On September 22, 2004, Union representative Tina Marie Love filed a grievance with Director of Public Works Dennis Schmidt alleging that Schmidt had improperly circumvented the MOU by directing that a temporary stop sign be erected by someone other than the on-call employee, Peppas. The grievance requested back pay and assurance that only bargaining unit employees would perform the work in the future.

On September 27, Schmidt responded to Love by letter denying the grievance. He explained that he found no violation of the MOU and that a police officer "made the determination that it was not necessary to call out the on-call individual because the temporary stop sign was sufficient until the next business day."

On October 25, 2004, Love responded to Schmidt with a letter requesting certain information about the on-call policy and the manner in which the dispatcher is to handle emergency situations. She also inquired into the particular incident as to the reasons for not assigning the on-call person to immediately repair the sign, and whether the police were asked to make the temporary sign repair.

On November 2, Schmidt replied by letter to Love noting that he had denied the grievance on September 27 and stating,

Thereafter, you failed to file an appeal within fourteen days after receipt of the Level 1 denial of the grievance. The Town does not wish to continue to exchange questions and answers regarding this matter because the Town has previously responded and no timely appeal was filed concerning the matter.

By letter of December 8, Love protested the denial of the requested information and stated her position that the grievance had not yet been denied.

At the hearing in this matter, Love testified that, when she wrote her information request of October 25, she did not think the grievance matter had been resolved and she was still discussing it, and the on-call policy in general, with Bill May, the Town's spokesman in negotiations for the new MOU. The information request had been prompted in part by these ongoing discussions with May, and Love had carbon copied him. She had also discussed with May her need for the information in negotiations. He said he would talk with Town officials. Eventually, May told Love that she was not going to receive the information.

ISSUE

Did the Town of Paradise act unlawfully when it refused to provide the information requested by the Union?

CONCLUSIONS OF LAW

An exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation unless the employer can supply adequate reasons why it cannot provide the information. (Stockton Unified School District (1980) PERB Decision No. 143 (citing NLRB v. Truitt Mfg. Co. (1956), 351 U.S. 169). PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (Trustees of the California State University (1986) PERB Decision No. 613-H.) Failure to provide such information is a per se violation of the duty to bargain in good faith.

In this case, the collective bargaining agreement provides for wages for mandatory on-call status. It also provides for minimum paid hours when an on-call employee is required to perform work. Hours and wages are among those subjects specified as within the scope of bargaining under the MMBA. (Gov. Code

section 3504.) Information pertaining immediately to a mandatory subject of bargaining is presumptively relevant. (Stockton Unified School District, supra, PERB Decision No. 143.) Here, the Union requested information on the implementation of the on-call policy, specifically the circumstances in which an employee is called upon to perform work duties and paid pursuant to the MOU. Such information is relevant to the Union's ability to administer the contract and resolve disputes.

The Town contends that because an appeal of the grievance was untimely, "the answers to the Union's questions posed in the October 25th letter were moot." In essence, the Town made its own determination that the information was no longer necessary for the Union to perform its representation duties. The Town does not appear to challenge that the information is relevant to a matter within the scope of representation.

That an appeal to the next level of the grievance procedure was untimely is arguable. However, a determination on the merits of that argument is not required here. Even assuming an appeal of the grievance was untimely, the Employer had an obligation to provide the requested information.

The exclusive representative is entitled to information it needs "to understand and intelligently discuss the issues raised in bargaining." (Trustees of the California State University, supra, PERB Decision No. 613-H.) Here the parties were engaged in collective bargaining for a new MOU at the time the grievance was filed. One of the issues at the bargaining table was the on-call policy. Love carbon copied the Town's labor negotiator, Bill May, with her request for the information. In negotiations, she discussed her need for the information. After conferring with Town representatives, May told her that the information would not be forthcoming. This refusal to provide necessary and relevant information was a violation of the Town's duty to bargain.

Further, even if the parties had not been engaged in bargaining, Schmidt's refusal to provide the information constituted an unfair practice. During the term of a collective bargaining agreement, a union has the right to apprise employees regarding benefits and terms of the collective bargaining agreement and effectively administer it. (Prudential Ins. Co. of America v. NLRB (1969) 412 F.2d 11.) Where the

information requested is relevant and necessary to effectively administer the agreement, it must be provided even absent a specific grievance dispute between a union and an employer. (Ormet Aluminum Mill Products, Inc. (2001) 335 NLRB 788 [169 LRRM 1514].) The Union has a right to the requested information to evaluate the merits of future claims and whether to pursue a grievance.

As discussed, the information request pertains to mandatory subjects of bargaining. Such information must be disclosed unless the employer can establish that the information is plainly irrelevant, too burdensome to produce, or cannot be disclosed. (Stockton Unified School District (1980) PERB Decision No. 143.) The record here establishes none of these defenses. The only argument presented, that because the Union was tardy in appealing a grievance the information was no longer necessary, has been rejected.

By refusing to provide the information, the Town violated its duty to bargain in good faith. By this same conduct, the Town denied the Union its right to represent employees and interfered with the right of employees to be represented by an employee organization of their choice.

REMEDY

Pursuant to section 3509(a), the PERB under section 3541.3(i) is authorized:

To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

The Town violated its duty to negotiate in good faith when it refused to provide the Union with information relating to its employee on-call policy that is necessary and relevant to represent employees, in violation of section 3505, and thus committed an unfair practice under section 3509(b) and PERB Regulation 32603(c). By this conduct, the Town denied the Union the right to represent its members, in violation of section 3503 and PERB Regulation 32603(b), and interfered with the right of employees to be represented by an employee organization of their choice, in violation of section 3506 and PERB Regulation 32603(a). It is appropriate that the Town of Paradise be ordered to cease and desist from such conduct and, upon request, provide Operating Engineers Local 3 with the information requested on October 25, 2004.

It is appropriate to order the Town to post a notice incorporating the terms of the order at all locations in the Town where notices to unit employees are customarily posted. Posting of such notice, signed by an authorized agent of the Town, will provide employees with notice that the Town has acted in an unlawful manner, is being required to cease and desist from such activity, and will obey the order. It effectuates the purpose of the MMBA that employees be informed of the resolution of this controversy and of the Town's readiness to comply with the ordered remedy. (County of Sacramento (2004) PERB Decision No. 1581-M.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record herein, it is found that the Town of Paradise (Town) violated the Meyers-Milias-Brown Act (MMBA), and the Public Employment Board (PERB or Board) Regulations 32603 (a), (b), and (c). (Cal. Code Regs., tit., 8, sec. 31001 et seq.) The Town violated its duty to negotiate in good faith with Operating Engineers Local 3 (Union) when it refused to provide information for the Union that is necessary and relevant to represent employees, in violation of section 3505, and committed an unfair practice under section 3509(b) and PERB Regulation 32603(c). By this same conduct, the Town denied the Union the right to represent its members, in violation of section 3503 and PERB Regulation 32603(b). By the same conduct, the Town interfered with the right of employees to be represented by an employee organization of their choice, in violation of section 3506 and PERB Regulation 32603(a).

Pursuant to sections 3509(a) and 3541.3(i) of the Government Code, it is hereby ordered that the Town and its representatives shall:

A. CEASE AND DESIST FROM

1. Refusing to provide the Union with information that is necessary and relevant to represent bargaining unit employees, including information related to the employee on-call policy.
2. Interfering with the right of bargaining unit employees to be represented by the Union, an employee organization of their choice.

3. Denying the Union the right to represent bargaining unit employees.

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

1. Upon request, provide to the Union information that is necessary and relevant to represent bargaining unit employees, including information relating to the employee on-call policy as requested on October 25, 2004.

2. Within ten (10) workdays of service of a final decision in this matter, post copies of the Notice attached hereto as an Appendix at all work locations where notices employees represented by the Union are customarily posted. The Notice must be signed by an authorized agent of the Town, indicating that the Town will comply with the terms of the 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.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the General Counsel of the Public Employment Relations Board, or his designee, in accordance with his instructions. Continue to report to the General Counsel thereafter as directed. All reports to the General Counsel shall be served concurrently on the Union.

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 95814-4174

FAX: (916) 327-7960

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, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 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, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 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, secs. 32300, 32305, 32140, and 32135(c).)

Bernard McMonigle
Administrative Law Judge