STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TORRANCE MUNICIPAL EMPLOYEES, AFSCME LOCAL 1117, Charging Party, v. CITY OF TORRANCE, Respondent.	Case No. LA-CE-316-M PERB Decision No. 1971-M August 21, 2008
CITY OF TORRANCE, Charging Party, v. TORRANCE MUNICIPAL EMPLOYEES, AFSCME LOCAL 1117, Respondent.	Case No. LA-CO-43-M

Appearances: Reich, Adell & Cvitan by Marianne Reinhold, Attorney, for Torrance Municipal Employees, AFSCME Local 1117; Ronald T. Pohl, Assistant City Attorney, for City of Torrance.

Before Neuwald, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

DOWDIN CALVILLO, Member: These consolidated cases come before the Public Employment Relations Board (PERB or Board) on exceptions by the Torrance Municipal Employees, AFSCME Local 1117 (AFSCME) and the City of Torrance (City) to the proposed decision of a PERB administrative law judge (ALJ). AFSCME's charge alleged that the City

violated the Meyers-Milias-Brown Act (MMBA)[1] by retaliating against City library employee and AFSCME President Jeannie Moorman (Moorman) because AFSCME campaigned against the successful candidate in a mayoral election. AFSCME alleged that the City retaliated against Moorman by: (1) reducing her union business release time from five days per week to three days per week; and (2) demanding she reimburse the City for release time she had taken in excess of three days per week over a six-month period. The City's charge alleged that AFSCME refused to meet and confer over the City's proposal to reduce presidential release time to one day per week. The ALJ found both parties committed the charged violations.

The Board has reviewed the entire record in this case, including but not limited to, the unfair practice charges, the complaints and answers, the hearing transcripts and exhibits, the ALJ's proposed decision, the parties' exceptions and supporting briefs, and the parties' responses thereto. Based on this review, we affirm the violations found by the ALJ for the reasons discussed below. We also adopt the ALJ's proposed orders as modified herein.

BACKGROUND

2002 Presidential Release Time Agreement

In early 2002, AFSCME and the City participated in binding arbitration over the issue of union business release time for the AFSCME president. Following a hearing, but before the arbitrator issued a decision, the parties entered into a settlement agreement. The June 20, 2002 agreement (2002 Agreement) provided that the AFSCME president would be released for union business on Tuesday, Wednesday and Thursday of each week. The president would be required to report to his or her regular work assignment on Mondays and Fridays. However, the president could "swap" a scheduled work day for a union business day by giving the City's

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

labor relations manager 48 hours notice of the swap. The agreement also stated that three infractions of the agreement within one fiscal year would be grounds for discipline.

AFSCME and City representatives signed the 2002 Agreement and submitted it to the city clerk pursuant to Torrance Municipal Code section 14.8.14, which states, in relevant part:

> If agreement is reached [by management and a recognized employee organization] on matters not subject to approval by the City Council, those conferring shall jointly prepare a written and signed memorandum of such agreement which shall be filed with the City Clerk.

Additionally, section 14.8.2(o) of the Municipal Code defines a memorandum of understanding (MOU) as:

> a written document jointly prepared by management and a recognized employee organization or organizations enumerating any agreement reached as the result of meeting and conferring in good faith on matters within the scope of representation, and signed by the parties involved.

Pre-Election Events

In 2004, AFSCME supported Measure T, which would place the City's municipal election on the same date as the California primary. Councilman Frank Scotto (Scotto) opposed the measure. Voters approved Measure T in that year's municipal election.

During the spring of 2005, AFSCME and the City were negotiating an MOU to succeed the one that would expire on June 30, 2005. Sometime in March 2005, Moorman (then serving as vice-president), AFSCME President Alan Lee (Lee) and AFSCME Secretary Greg Ferguson (Ferguson) met with Scotto about the negotiations. At this meeting, Scotto told Lee and Ferguson he was angry with them for speaking out against Measure T at city council meetings and, as a result, he would have difficulty working with them. He said he could still work with Moorman because she "hadn't done anything yet." Scotto then warned AFSCME not to get involved in the upcoming mayoral election, in which Scotto was challenging incumbent Dan

Walker (Walker). Scotto also said that when he became mayor, AFSCME should not come to him for anything. Scotto refused to shake hands with Lee and Ferguson at the end of the meeting. Soon after this meeting, Lee went to work for AFSCME International; Moorman became president of AFSCME and Ferguson became vice-president.

On August 9, 2005, during the public comment portion of a Torrance City Council meeting, Moorman asked Scotto to respond to allegations that he had used his official position to influence the development of a parcel of land adjacent to his business. Both AFSCME's membership and board of directors had voted for her to ask those questions at the City Council meeting. The official minutes of the meeting indicate that Moorman stated she was asking the questions "on behalf of her board and members." The record did not show that Moorman addressed Scotto at any other city council meeting during 2005 or 2006. On August 14, 2005, the Daily Breeze newspaper published a letter to the editor from Moorman, identified as AFSCME president, asking the same questions she posed at the city council meeting.

Moorman's Transition to Five Day Release Time

During the fall of 2005, Moorman discussed with library management the difficulties she was having completing her work because she was spending three days a week on union business. To remedy this situation, library management and the city manager proposed a budget modification that would shift the cost of the AFSCME president's release time to the city manager's office, thereby allowing the library "to hire an employee for coverage of functions formerly performed by the Union President." Although the proposed modification noted that the 2002 Agreement provided for presidential release time on Tuesdays, Wednesdays and Thursdays, the modification was silent as to whether it would allow the president release time on more than those three days.

The City Council's Finance and Governmental Operations Committee approved the library staffing modification on December 20, 2005. The record contains no evidence that the committee discussed increasing Moorman's release time or amending the 2002 Agreement as part of the modification. Immediately after the finance committee meeting, which Moorman attended, City Librarian Paula Weiner (Weiner) told Moorman that once the city council adopted the budget modification, Moorman would be released full time for union business. Soon after, Weiner and Patrice Deleget (Deleget), Moorman's immediate supervisor, told Moorman to clean out her desk and make sure the employee who would be replacing her knew the passwords for her computer and voicemail. It is unclear as to who, if anyone, authorized Weiner and Deleget to convey this course of action to Moorman.

At the January 10, 2006 city council meeting, the City's finance director presented to the council proposed modifications to the City's first quarter budget, including the library staffing modification. Scotto then reported on the December 20, 2005 committee meeting, "noting that the committee also reviewed the proposed program modifications in their entirety." Following Scotto's report, the city council unanimously adopted the City's first quarter budget package, which included the library staffing modification. Again, the record contains no evidence that the city council discussed increasing Moorman's presidential release time or amending the 2002 Agreement as part of the modification.[2]

On January 13, 2006, Deleget e-mailed library staff that she had been informed by Norm Reeder, the library services manager, "that Jeannie Moorman will be starting to work on

[2]It is troubling that neither the finance committee nor the city council raised the issue of the status of the president's release time because the language of the proposed modification is frustratingly ambiguous. Some parts seem to indicate that the president will continue taking only three days of release time per week while others suggest that the president will work full-time on union business. Yet, according to the record, not a single member sought to clarify what effect, if any, the modification would have on the president's release time.

Union duties full time immediately, so will not be returning to her duties at the library except possibly to clean out some of her files." On February 8, Weiner e-mailed library staff about personnel changes. Her e-mail stated: "Melissa replaces Jeannie Moorman, who is currently serving as AFSCME President on a full-time basis." However, the record is silent as to who, if anyone, actually authorized an email indicating that Moorman would relinquish her library duties in their entirety so that she could perform union business full-time.

Beginning in early January 2006, Moorman spent five days per week on union business. On her timesheets, she coded each of those days as president release time. In late January, Moorman went out on medical leave due to a broken ankle. Ferguson filled in as AFSCME president until Moorman returned to work in mid-April. During that time, Ferguson spent three days per week on union business. Upon her return, Moorman again used presidential release time five days per week.

During the spring 2006 mayoral campaign, AFSCME actively supported incumbent Mayor Walker against challenger Scotto because AFSCME believed Scotto was less favorable to unions. Several days before the election, Moorman recorded a "robocall" in which she said that Scotto was being investigated by the district attorney's office; the recording did not reference her position as AFSCME president. She also wrote another letter to the editor criticizing Scotto in which she identified herself only as a City employee. On June 6, 2006, Scotto was elected mayor.

On or about June 26, 2006, Brian Sunshine (Sunshine), assistant to the city manager, called the library to speak with Moorman. Weiner told Sunshine that Moorman worked for the city manager's office now pursuant to the budget modification. Sunshine informed City Manager LeRoy Jackson (Jackson) and Assistant City Manager Mary Giordano (Giordano) of this conversation. Giordano requested Moorman's payroll records for the past six months. She

did not speak with Moorman or Weiner about the increased amount of release time. On June 28, Weiner sent Moorman a memorandum stating that, per the city manager, Moorman was to report for work at the library on Mondays and Fridays.

Moorman's Post-Election Conversations with City Management

Following her receipt of the June 28, 2006 memorandum, Moorman called City Manager Jackson. She told Jackson she believed the City reduced her presidential release time because she backed the wrong candidate in the election. She said the punishment seemed harsh and retaliatory; Jackson did not deny Moorman's characterizations. Moorman offered to show Jackson the e-mails from Deleget and Weiner saying that she was on release for union business full time.; Jackson responded that he did not need to see the e-mails.[3]

Moorman met with Mayor-elect Scotto on July 6, 2006. Scotto told Moorman he had been briefed on the release time issue. Moorman showed him the Deleget and Weiner e-mails. She also told Scotto she felt the reduction of her release time as punishment for backing the wrong candidate was harsh. While Scotto did not specifically address Moorman's release time, he said he was "disappointed" in her for asking him questions at the city council meeting and that he would hold her "personally responsible." Scotto also said he could not work with AFSCME as long as Moorman was president.

Correspondence and Meetings About Presidential Release Time

On July 27, 2006, Moorman filed a grievance over the City's order that she report for work on Mondays and Fridays. Without speaking with Moorman or any library management, Assistant City Manager Giordano rejected the grievance on August 3. In the rejection letter, Giordano stated that the City was merely enforcing the 2002 Agreement, which provided for

[3]Because Jackson did not testify at the hearing, these facts are based solely on Moorman's testimony.

only three days per week of presidential release time. She also noted that any Monday or Friday Moorman spent on union business without providing notice "was unauthorized time away from your job at the Library and an infraction of the agreement." On August 14, AFSCME appealed the grievance to the principal librarian.

On August 15, 2006, Giordano sent Moorman a letter saying she had reviewed Moorman's payroll records and discovered Moorman had taken 19.9 days of unauthorized release time. The letter asked Moorman to provide in writing within ten days "if you want the time charged to vacation or if you prefer to repay the City for the days charged that appear to have exceeded the AGREEMENT." The letter also advised Moorman of a new method for coding presidential release time on her timesheets. Giordano did not speak to Moorman or library management about Moorman's release time prior to sending this letter.

On August 21, 2006, AFSCME's counsel sent a letter to Giordano claiming that the change in presidential release time was an unlawful unilateral change and that it constituted retaliation against Moorman. Attached to the letter were the Deleget and Weiner e-mails referencing Moorman's full time status as AFSCME president. The letter also stated: "This letter shall serve as a demand that the City commence the meet and confer process with Local 1117 immediately on the subject of release time for the Union President."

Giordano responded by letter on August 23. She accepted AFSCME's demand to meet and confer over presidential release time. She also stated that the City agreed to "defer its request for reimbursement" of the 19.9 days of release time "pending resolution of release time issues." Giordano testified that Jackson had decided to forego seeking reimbursement of the release time based on the Deleget and Weiner e-mails attached to the August 21 letter from AFSCME's counsel. On August 28, AFSCME filed its unfair practice charge.

AFSCME and the City held a meet and confer session on September 7, 2006. The City presented a written proposal to rescind the 2002 Agreement and amend the MOU to provide for one day per week of presidential release time. AFSCME took the position that the 2002 Agreement was not subject to renegotiation and therefore it was only willing to discuss the City's order that Moorman report for work on Mondays and Fridays. The following day the City requested in writing to meet and confer over its proposal. On September 12, AFSCME responded that it would not meet and confer over the 2002 Agreement but only over "the reduction of the president's release time pertaining to the Mondays and Fridays."[4] The City responded on September 25 that AFSCME's limitation of the scope of the meet and confer process to only its presidential release time issue was bad faith bargaining and "has compelled the City to file an unfair labor practice" with PERB. The letter further noted that the 2002 Agreement remained in effect and directed Moorman to follow certain steps to avoid infractions under the agreement. The City filed its unfair practice charge on September 29.

On October 3, 2006, AFSCME and the City met again to discuss presidential release time. The City presented a written proposal that the parties agree to dismiss their unfair practice charges and meet and confer in good faith over "all issues regarding Union President release time." AFSCME responded by letter on October 16 that it would not meet and confer over the 2002 Agreement. On October 20, City Manager Jackson responded: "The City will not be a participant in bad faith negotiations as proposed by AFSCME with the limiting of discussions at the bargaining table to only those of [AFSCME]."

[4]Also on September 12, 2006, Moorman filed a grievance claiming that the City's demand that she repay 19.9 days of union release time was retaliation for Moorman's protected activity of campaigning against Scotto. The City responded on September 19 that it was ceasing its efforts to recoup the 19.9 days of release time.

ALJ's Proposed Decision

The ALJ concluded that the City retaliated against Moorman because of her protected activity. The ALJ found that Moorman's conduct as AFSCME president, including campaigning against Scotto, constituted protected activity of which the City had knowledge. He also found that the City took adverse action against Moorman by reducing her release time to three days per week and demanding reimbursement for 19.9 days of allegedly unauthorized release time. The ALJ found a nexus between Moorman's protected activity and the City's adverse actions because: (1) the adverse actions occurred shortly after Scotto was elected mayor; (2) the City conducted a cursory investigation of Moorman's use of release time; and (3) Jackson's statements to Moorman in late June indicated union animus on the part of the City. The ALJ further found that Scotto's statements to Moorman in the July 6, 2006 meeting interfered with Moorman's rights under MMBA because they "would tend to discourage her from continuing to serve as president" of AFSCME. The ALJ ordered the City to restore Moorman to five days per week of release time through the end of her term or until the parties negotiated a new agreement on the subject, whichever came first.

The ALJ also concluded that AFSCME failed to meet and confer in good faith by limiting the scope of bargaining to the City's alleged reduction of presidential release time from five days to three days per week. The ALJ found that the 2002 Agreement was not part of the 2005-2007 MOU between the parties and therefore it was open to renegotiation at anytime. The ALJ ordered AFSCME to meet and confer in good faith over the issue of presidential release time.

City's Exceptions

The City makes the following exceptions to the ALJ's proposed decision:

(1) Moorman's campaigning against Scotto was not protected activity under MMBA;

(2) Scotto's union animus cannot be imputed to the City;

(3) The ALJ failed to acknowledge that enforcement of the 2002 Agreement provided a legitimate business reason for the City's actions;

(4) The ALJ erroneously credited Moorman's testimony over Scotto's;

(5) MMBA does not provide for a retaliation claim;

(6) The evidence does not support the ALJ's finding that the City conducted an inadequate investigation;

(7) The ALJ improperly drew an adverse inference against the City based on Jackson's failure to testify; and

(8) The proposed order fails to require AFSCME to reimburse the City for "days of release time it acquired" by its refusal to bargain over presidential release time.

AFSCME's Exceptions

AFSCME excepts solely to the ALJ's conclusion that it violated MMBA by refusing to meet and confer over the 2002 Agreement. AFSCME argues that: (1) the City violated its duty to bargain in good faith by conditioning further bargaining on the parties withdrawing their PERB charges; and (2) the City waived its right to bargain over presidential release time by entering into the 2002 Agreement.[5]

[5]AFSCME also asserts that the City's exceptions 3, 5 and 6 fail to satisfy PERB Regulation 32300(a)(2) (Cal. Code of Regs., tit. 8, sec. 31001 et seq.) because they don't "[i]dentify the page or part of the decision to which each exception is taken." While this is technically true, it is possible from the exception headings and content to identify the portion

DISCUSSION

Retaliation

To establish a prima facie case of retaliation in violation of MMBA section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained, or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Assn. v. City of Campbell (1982) 131 Cal.App.3d 416 [182 Cal.Rptr. 461] (Campbell); San Leandro Police Officers Assn. v. City of San Leandro (1976) 55 Cal.App.3d 553 [127 Cal.Rptr. 856] (San Leandro).)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following nexus factors should be present: (1) the employer's disparate treatment of the employee (Campbell); (2) the employer's departure from established procedures and standards when dealing with the employee (San Leandro); (3) the employer's inconsistent or contradictory justifications for its actions (San Leandro); (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) employer animosity towards union activists (San Leandro;

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of the decision to which the City is excepting. Thus, given that PERB has never before rejected exceptions on this technical ground, we decline to do so here.

Los Angeles County Employees Assn. v. County of Los Angeles (1985) 168 Cal.App.3d 683 [214 Cal.Rptr. 350].).

In its exceptions, the City does not directly challenge the ALJ's conclusion that the City retaliated against Moorman because of her protected activity. Instead, the City argues that MMBA does not "establish a 'retaliation' claim for relief." The City bases this argument on the fact that neither MMBA section 3506 nor PERB Regulation 32603(a) uses the word "reprisal" in listing conduct that constitutes an unfair practice by a public agency under MMBA.[6] Nonetheless, PERB has held that reprisals constitute a prohibited form of discrimination under MMBA. (County of San Joaquin (Health Care Services) (2003) PERB Decision No. 1524-M (San Joaquin).) This is consistent with cases decided under section 8(a)(3) of the National Labor Relations Act (NLRA), which also prohibits discrimination but does not specifically mention reprisals or retaliation.[7] (E.g., Central Valley Meat Co. (2006) 346 NLRB 1078, 1079 [179 LRRM 1281] [finding employer violated section 8(a)(3) by discharging an employee "in retaliation for his union activities"].)[8] Accordingly, the ALJ properly characterized and analyzed the alleged MMBA section 3506 violation as a retaliation claim.

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[6]Both provisions state that it is an unfair practice for a public agency to "interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise" of rights under MMBA.

[7]Section 8(a)(3) of the NLRA, codified at 29 U.S.C. section 158(a)(3), provides that it is an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

[8]When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the NLRA and California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

Protected Activity

AFSCME alleged that the City took adverse action against Moorman because AFSCME supported Scotto's opponent in the mayoral election and Moorman personally campaigned against Scotto. In Fresno County Office of Education (2004) PERB Decision No. 1674, PERB addressed whether union officers' political activity is protected under the Educational Employment Relations Act (EERA).[9] In that case, two longtime union officers had actively opposed the re-election of the County Superintendent of Education in several elections. Additionally, one of the officers had authored a newspaper article criticizing the superintendent for hiring an ex-felon as an assistant. The Board found that because they were acting in their capacity as union officers when they engaged in the political activity, it was protected activity under EERA.

AFSCME opposed Scotto's candidacy for mayor because it perceived him to be less favorable to unions than incumbent Mayor Walker. As AFSCME's president, Moorman necessarily played a significant role in coordinating the union's active election campaign against Scotto. As part of the campaign, Moorman personally questioned Scotto at a city council meeting about alleged misconduct. AFSCME's governing board and its members voted to authorize this questioning and the meeting minutes reflect that Moorman stated she was speaking on behalf of AFSCME. Moorman also wrote a letter critical of Scotto that was published in the local newspaper. The letter identified her as the AFSCME president. Because Moorman undertook these political activities in her capacity as AFSCME president, they were protected activity under MMBA.[10]

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[9]EERA is codified at Government Code section 3540 et seq.

[10]In addition to these activities, Moorman wrote a second letter to the editor and recorded a "robocall" criticizing Scotto. Neither addressed issues of employer-employee

In its exceptions, the City argues that Moorman's political activity was not protected because it did not pertain to employer-employee relations. Moorman's questions and letter to the editor involved accusations that Scotto improperly used his position on the city council to influence property development. However, they were made in the context of an organized effort by AFSCME to oppose Scotto's candidacy for mayor. Opposing a candidate perceived as less favorable to unions is a matter of employer-employee relations because the election of that candidate could have a detrimental effect on those relations and, in turn, on the working conditions of AFSCME's members. Thus, we find no merit to this exception.[11]

Adverse Action

To prove its retaliation claim, AFSCME must establish that the City took adverse action against Moorman because she engaged in activity protected by MMBA. The test for an adverse action is "whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment." (City and County of San Francisco (2004) PERB Decision No. 1664-M.) The ALJ found that the City took two actions adverse to Moorman: (1) reducing her release time from five days to three days per week; and (2) demanding that she reimburse the City for 19.9 days of allegedly unauthorized release time taken during the prior six months.

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relations or identified Moorman as an AFSCME officer. Accordingly, the letter and recording were not protected activity under MMBA.

[11]In its exception, the City relies on United Auto Workers v. National Labor Relations Board (D.C. Cir. 1981) 645 F.2d 1151 [106 LRRM 2561], in which the court found that union members' distribution of flyers supporting candidates for state and federal office was not protected activity because it did not relate to employer-employee relations. That case is inapposite because, unlike those candidates, Scotto was running for a position on the governing board of AFSCME members' employer and therefore AFSCME's political activity was related to matters of employer-employee relations.

We disagree with the ALJ's finding that the City took adverse action against Moorman by ordering her to report to the library for work on Mondays and Fridays per the 2002 Agreement. It is not an unfair practice for an employer to enforce a clear contractual right, even if it has not done so in the past. (Marysville Joint Unified School District (1983) PERB Decision No. 314 (Marysville).) In Marysville, the collective bargaining agreement provided that teachers would have a duty-free lunch period of no less than 30 minutes. Nonetheless, the district had regularly allowed teachers to take a 55 minute lunch break. The Board found that the district's assignment of lunchtime supervision duties that still left teachers with a 30 minute lunch break was not an unfair practice because the action fell within the district's clear contractual right to limit lunch breaks to 30 minutes. Here, the 2002 Agreement provided for presidential release time on Tuesdays, Wednesdays and Thursdays only. Accordingly, the City did not take adverse action against Moorman by enforcing its clear contractual right to limit her release time to those days.

Nevertheless, we agree with the ALJ that the City's demand that Moorman reimburse it for 19.9 days of release time was an adverse action because reimbursement would result in loss of pay or vacation leave. Additionally, the demand arose out of an investigation into whether Moorman took release time without authorization. The initiation of an investigation into alleged misconduct constitutes an adverse action against the investigated employee. (State of California (Department of Youth Authority) (2000) PERB Decision No. 1403-S.) This is so even if the investigation does not ultimately result in discipline. (California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S.) As the City noted in several letters to Moorman, unauthorized use of presidential release time could subject her to discipline under the 2002 Agreement. Thus, under these circumstances both the City's demand for

reimbursement of release time, and the investigation out of which it arose, constituted adverse actions against Moorman.

Timing

To establish the necessary causal nexus between Moorman's protected activity and the City's adverse actions against her, AFSCME must show that they occurred close in time to one another. While Moorman's public statements about alleged misconduct by Scotto occurred in August 2005, AFSCME actively campaigned against Scotto up until the June 6, 2006 election. Moorman was involved in the campaign in her role as AFSCME president.

Soon after Scotto was elected mayor on June 6, the City took adverse action against Moorman. On August 3, the City threatened Moorman with discipline for violating the 2002 Agreement. On August 15, the City demanded that Moorman reimburse the City for 19.9 days of allegedly unauthorized release time. Therefore, the City's adverse actions against Moorman occurred soon after she had engaged in the protected activity of campaigning against Scotto. This closeness in time between Moorman's protected activity and the City's adverse actions supports an inference of retaliation.

Cursory Investigation

Having satisfied the timing factor, AFSCME must also show at least one additional factor to establish retaliation. An employer's cursory investigation of an employee's alleged misconduct is one such factor. (Coast Community College District (2003) PERB Decision No. 1560.) The ALJ found that the City conducted a cursory investigation of Moorman's use of presidential release time. The Board agrees and adopts the following analysis from the proposed decision:

> Besides the timing of the City's actions, perhaps the most striking feature of this case is the City's limited investigation of Moorman's taking of release time. Giordano, who apparently did

the only investigation, did not speak to Moorman or to the City Librarian but simply reviewed Moorman's timesheets, on which Moorman had openly used an employee relations code full-time.

In her letter of August 3, 2006, in which she rejected Moorman's first grievance, Giordano represented that 'the Library became aware' that Moorman was conducting Union business. This representation was untrue, as any investigation would have shown. The City Librarian had always known what Moorman was doing and had announced it in an e-mail message to library staff. Moorman had offered to show that message to the City Manager, but he said he did not need to see it.

In the same August 3 letter, Giordano accused Moorman of an 'infraction' of the 2002 Agreement, under which three infractions within one fiscal year would subject Moorman to discipline. Giordano never withdrew that accusation. On the contrary, in her letter of August 15, 2006, Giordano implicitly repeated the accusation by telling Moorman what to do to 'preclude further infractions.' Even as late as her letter of September 25, 2006, Giordano brought to Moorman's attention the infraction language of the 2002 Agreement. These explicit and implicit accusations of misconduct and threats of discipline were not supported by an investigation of the underlying facts.

In her August 15 letter, Giordano escalated the attack on Moorman, again without investigating the underlying facts, by asking Moorman to reimburse the City for 19.9 days of release time already taken. Even after seeing the e-mail messages of January 13 and February 8, neither Giordano nor the City Manager acknowledged that Moorman's supervisors had authorized her to work full-time for the Union, a fact that made the City's request for reimbursement unsupportable. In his letter of August 23, 2006, the City Manager merely agreed to 'defer' the City's request 'pending resolution of release time issues.' In her letter of September 19, 2006, Giordano merely agreed to 'cease efforts' to obtain reimbursement 'in the interest of attempting to achieve an amicable resolution of these and other associated issues.'

In short, during the three months they were attacking Moorman, Giordano and the City Manager showed no desire to ascertain or acknowledge the underlying facts. Their investigation of those facts was cursory at best.

The City excepts to the ALJ's finding that it conducted a cursory investigation. However, the exception does not address the clear evidence of the City's failure to adequately investigate Moorman's release time use. Instead, the City argues that Moorman had an obligation to inform the City that she was on full time presidential release time. However, prior to receiving the June 28, 2006 memorandum ordering her to report for work on Mondays and Fridays, Moorman had no idea that the city manager's office was unaware that she was conducting union business full time. After she received the memorandum, she attempted to show the Deleget and Weiner e-mails to Jackson, but he said he did not need to see them.[12] At the July 6 meeting, Scotto read the e-mails but apparently did nothing in response to them. Thus, Moorman did attempt to explain to City management why she was taking five release time days per week, but her efforts proved fruitless. In fact, the city manager's and mayor's inaction under these circumstances further support an inference of retaliation.

Union Animus

Expression of anti-union sentiments by the employer or its agents also supports an inference of retaliation. (Jurupa Community Services District (2007) PERB Decision No. 1920-M.)

Here, Scotto's anti-union statements to Moorman during the July 6, 2006 meeting support such an inference. During that meeting, Scotto said he had been briefed on the presidential release time issue. Moorman told him that she felt the reduction of her release time as punishment for backing the wrong candidate was harsh. While Moorman could not remember Scotto's response to this statement, she did recall:

[12]Unlike the ALJ, we find no legal significance in Jackson's failure to deny a retaliatory motive for the reduction of Moorman's release time, either during his telephone conversation with Moorman or at the PERB hearing. In light of this finding, we need not address the City's

> He said he felt like a dad who was, had a bad child, that he was very disappointed in me. And disappointed at what I did and that he was going to hold me personally responsible. He said that he would have a hard time working with me. I asked him what he meant by what I did, he said you know when you stood up at the microphone and asked me those questions.

On their face, these statements may appear to be addressed to Moorman personally. However, when viewed in the context of Scotto's statements to AFSCME officials at the March 2005 meeting, the anti-union character of his statements to Moorman becomes apparent. At the 2005 meeting, Scotto told Lee and Ferguson he was angry with them because at city council meetings they had spoken in opposition to Measure T, which Scotto strongly supported. Scotto told them he could still work with Moorman because she "hadn't done anything yet." Scotto then warned AFSCME not to get involved in the upcoming mayoral election and said that when he became mayor AFSCME should not come to him for anything. These statements show that Scotto harbored animus toward AFSCME because of its opposition to Measure T.

Scotto expressed similar displeasure with AFSCME to Moorman at the July 6, 2006 meeting. Scotto told her during a discussion of the recent mayoral campaign that he "was very disappointed in [her and] was going to hold her personally responsible" for her questions on behalf of AFSCME at the August 9, 2005 city council meeting. This statement clearly refers to actions Moorman took in her capacity as AFSCME president. Additionally, Moorman testified that Scotto told her he could only work with AFSCME if she was not the president. When viewed in the context of Scotto's statements at the March 2005 meeting, his statements to Moorman show that, while Scotto may have been unhappy with Moorman personally, he also

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exception that the ALJ improperly drew an adverse inference against the City because it did not call Jackson to testify at the hearing.

harbored animus toward AFSCME because of its active campaign against him in the mayoral election.

In its exceptions, the City asserts the ALJ erroneously credited Moorman's testimony regarding the July 6, 2006 meeting over Scotto's testimony that he did not make any of the statements Moorman attributed to him. The Board affords great deference to an ALJ's credibility determinations because the ALJ is in a better position to make those findings by virtue of observing the witness' testimony. (State of California (Departments of Personnel Administration and Transportation) (1997) PERB Decision No. 1227-S.) The Board defers to the ALJ's credibility determinations unless there is evidence in the record to support overturning them. (Whisman Elementary School District (1991) PERB Decision No. 868.) We find no evidence in the record to support overturning the ALJ's determination that Moorman's testimony was more credible than Scotto's. Therefore, we defer to the ALJ's findings of fact based on Moorman's testimony about the July 6 meeting.

The City also excepts to the ALJ's finding that the City, through Scotto's anti-union statements, interfered with Moorman's rights under MMBA.[13] The basis for the City's exception is that as mayor, Scotto has only one vote on a seven-member city council and therefore his individual actions cannot bind the City. While this may be true in regards to the city council acting as a legislative body, it does not prevent Scotto's statements from being imputed to the City as employer.

PERB will impute a subordinate's union animus to the employer only when the subordinate's animus actually played some part in the ultimate decision. (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S; Konocti Unified

[13]While the ALJ addressed Scotto's statements in terms of interference, they are also relevant to show union animus supporting an inference of retaliation.

School District (1982) PERB Decision No. 217.) Here, Scotto was not a subordinate of the decision maker, Jackson, but was instead a member of the employer's governing body; thus, his ability to influence Jackson's decision was much stronger than if he were Jackson's subordinate. While there is no direct evidence of Scotto's involvement in the adverse actions taken against Moorman, the record supports a strong inference that Jackson acted at Scotto's direction or at least that Scotto tacitly approved of the city manager's actions. Therefore, we find that the ALJ properly imputed Scotto's union animus, as demonstrated by his statements to Moorman at the July 6 meeting, to the City.

"But For" Test

Once the charging party establishes a prima facie case of retaliation, as AFSCME has done here, the employer then bears the burden of proving that it would have taken the adverse action even if the employee had not engaged in protected activity. (Novato Unified School District (1982) PERB Decision No. 210; Martori Brothers Distributors v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 721, 729-730 [175 Cal.Rptr. 626] (Martori Brothers); Wright Line (1980) 251 NLRB 1083 [105 LRRM 1169].) Thus, where, as here, it appears that the employer's adverse action was motivated by both valid and invalid reasons, "the question becomes whether the [adverse action] would not have occurred 'but for' the protected activity." (Martori Brothers.) The "but for" test is "an affirmative defense which the employer must establish by a preponderance of the evidence." (McPherson v. Public Employment Relations Bd. (1987) 189 Cal.App.3d 293, 304 [234 Cal.Rptr. 428].)

In its exceptions, the City asserts that its right to enforce the 2002 Agreement justified its actions against Moorman. We do not dispute the City had such a right. However, viewing the record as a whole, we cannot conclude the City would have taken the actions it did had Moorman

not been involved in AFSCME's campaign against Scotto. Therefore, the City has not established a defense to the retaliation charge.

Interference

The test for whether a respondent has interfered with the rights of employees under the MMBA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The courts have described the standard as follows:

> All [a charging party] must prove to establish an interference violation of section 3506 is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons. [Public Employees Assn. v. Board of Supervisors (1985) 167 Cal.App.3d 797, 807 [213 Cal.Rptr. 491] (Tulare County).

As established above, Moorman engaged in protected activity by participating in AFSCME's election campaign against Scotto. The City's conduct toward Moorman from June through August 2006 tended to discourage her from continuing to serve as AFSCME president or, at least, from aggressively advocating on behalf of AFSCME's members.

Nonetheless, the City argues that enforcement of the 2002 Agreement provided a legitimate business reason for its actions. As noted, the City certainly had the right to enforce the agreement but it could not do so in a way that interfered with protected rights under MMBA. (See McFarland Unified School Dist. v. Public Employment Relations Bd. (1991) 228 Cal.App.3d 166 [279 Cal.Rptr. 26] [while Education Code gave school district complete authority not to reelect probationary teacher, it could not exercise its authority in a manner that violated EERA].) Thus, while the City legitimately could order Moorman to take only three days of release time per week, it could not threaten her with discipline and demand reimbursement of release time based on a cursory investigation of the facts. (See San Joaquin

[employer failed to show legitimate business reason because threats of discipline were based solely on "vague complaints by two individuals" which employer did not investigate].) Moreover, Scotto's statements that he would hold Moorman "personally responsible" for her questions at the August 9, 2005 city council meeting and that he could not work with AFSCME as long as she was president were in no way related to enforcing the 2002 Agreement. Rather, they appear to be aimed at coercing Moorman into stepping down as AFSCME president. Accordingly, the City failed to establish a legitimate business reason to justify its conduct toward Moorman that tended to interfere with her MMBA section 3502 right to participate in union activities.

Refusal to Bargain

In determining whether a party has violated MMBA section 3505 and PERB Regulation 32603(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) An absolute refusal to meet and confer on a subject within the scope of representation is a per se violation. (Sierra Joint Community College District (1981) PERB Decision No. 179 (Sierra).) Release time proposals fall within the scope of representation because they directly concern hours of employment. (Trustees of the California State University (2007) PERB Decision No. 1886-H; San Mateo Community College District (1993) PERB Decision No. 1030 (San Mateo).) Therefore, a refusal to bargain over a release time proposal is a per se violation of the duty to meet and confer in good faith. (San Mateo; Sierra.)

On August 21, 2006, AFSCME, through its counsel, demanded to meet and confer "immediately on the subject of release time for the Union President." The City accepted AFSCME's demand two days later. At the first meet and confer session on September 7, the

City presented a written proposal to rescind the 2002 Agreement and amend the MOU to reduce presidential release time to one day per week. AFSCME took the position that the 2002 Agreement was not subject to renegotiation and therefore it would only bargain over Moorman's use of presidential release time on Mondays and Fridays. The City reiterated its demand to bargain over the proposal in writing the next day. AFSCME responded on September 12 by restating its earlier position in writing. On September 25, the City again demanded to bargain over all issues regarding presidential release time. Four days later, the City filed its unfair practice charge.

On October 3, AFSCME and the City met again to discuss presidential release time. The City presented a written proposal that the parties agree to dismiss their unfair practice charges and meet and confer in good faith over "all issues regarding Union President release time." In an October 16 letter, AFSCME said that it would not meet and confer over the 2002 Agreement. On October 20, the City responded that it "will not be a participant to bad faith negotiations as proposed by AFSCME with the limiting of discussions at the bargaining table to only those of [AFSCME]."

As AFSCME correctly notes, it did not absolutely refuse to discuss the subject of presidential release time. However, by its own admission, AFSCME was only willing to discuss its release time issue and would not entertain the City's proposal because it believed the 2002 Agreement was not subject to renegotiation.[14] In Sierra, the employer refused to

[14]AFSCME attempts to characterize its refusal as "hard bargaining" by arguing it merely took the position that it would not agree to anything less then three days per week of presidential release time. There is a difference between unlawful bad faith bargaining and lawful hard bargaining. (See Tulare County, at p. 805 [adamant insistence on a bargaining position is not necessarily refusal to bargain in good faith if party "maintain[s] a sincere interest in reaching agreement"].) However, hard bargaining may occur only once the parties have entered into negotiations. Here, negotiations never occurred because AFSCME refused to bargain and therefore AFSCME could not have engaged in hard bargaining.

bargain over the union's release time proposal, claiming the subject was not negotiable. The Board held that the employer's good faith bargaining on other subjects did not prevent its refusal to bargain over the release time proposal from constituting a per se violation of the duty to bargain. Similarly, that AFSCME was willing to bargain over its release time issue does not preclude a finding that it committed a per se violation by refusing to bargain over the City's proposal. Therefore, we conclude that AFSCME's refusal to consider the City's proposal to reduce presidential release time constituted a per se violation of AFSCME's duty to meet and confer in good faith.

Waiver

AFSCME argues in its exceptions that it had no duty to bargain over the City's proposal because the City waived its right to bargain over presidential release time by entering into the 2002 Agreement. Any waiver of a right to bargain must be "clear and unmistakable." (Building Material & Construction Teamsters' Union v. Farrell (1986) 41 Cal.3d 651 [224 Cal.Rptr. 688]; Amador Valley Joint Unified School District (1978) PERB Decision 74.) Waiver is most readily apparent where the specific subject is covered by the express terms of an existing collective bargaining agreement. (See California State Employees' Assn. v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923, 938-940 [59 Cal.Rptr.2d 488]; Solano Community College District (1982) PERB Decision No. 219.) "In the absence of some form of waiver, the duty to bargain continues during the term of the collective agreement." (Placentia Unified School District (1986) PERB Decision No. 595.)

The 2002 Agreement was the product of negotiations between the parties and constitutes an MOU under Torrance Municipal Code section 14.8.2(o). However, unlike a typical MOU, the 2002 Agreement has no fixed term. Given that an explicit contract term waives the duty to bargain over that subject during the term of the agreement, this presents two

alternatives: (1) the 2002 Agreement is never subject to renegotiation; or (2) it is subject to renegotiation at any time. Under the first alternative, either party could refuse to bargain over the other's request to modify the 2002 Agreement in perpetuity. Such a calcification of working conditions is antithetical to the collective bargaining framework established by MMBA and, indeed, AFSCME does not argue that the 2002 Agreement can never be renegotiated.

Nonetheless, AFSCME rejects the alternative that the 2002 Agreement may be renegotiated at any time. Instead AFSCME argues that the 2002 Agreement may only be renegotiated during negotiations for a new MOU. Thus, according to AFSCME, it had no duty to bargain over the 2002 Agreement during the term of the parties' 2005-2007 MOU. However, nothing in the MOU incorporated or referenced the terms of the 2002 Agreement and therefore it was not a part of the MOU. (See Mt. San Antonio Community College District (1988) PERB Decision No. 691 [finding that MOU incorporated by reference into collective bargaining agreement did not survive agreement's expiration].) Accordingly, the 2002 Agreement was subject to renegotiation at any time and AFSCME violated its duty to meet and confer in good faith by refusing to bargain over it upon the City's demand.

Conditional Bargaining

AFSCME also excepts to the ALJ's failure to address its contention that it had no duty to bargain because the City engaged in unlawful conditional bargaining. Because this argument essentially alleges that the City committed an unfair practice, it is in the nature of an affirmative defense. (See NLRB v. Tragniew, Inc. (9th Cir. 1972) 470 F.2d 669, 673 [81 LRRM 2336] [an unfair labor practice may be raised as a defense to a refusal to bargain charge].) PERB Regulation 32644(b)(6) provides that the answer to a complaint must contain a "statement of any affirmative defense." An affirmative defense not raised in the answer will

not be considered by the ALJ. (Sonoma County Office of Education (1997) PERB Decision No. 1225.) AFSCME did not raise the City's alleged conditional bargaining as a defense in its answer nor did it move at hearing to amend its answer to include the defense. Accordingly, the ALJ properly declined to address the conditional bargaining defense.

However, even if the defense was properly raised, we find it has no merit. AFSCME alleges the City refused to bargain unless AFSCME agreed to withdraw its unfair practice charge. The record shows that on October 20, 2006, the City refused to negotiate further unless all presidential release time issues were on the table during bargaining. There is no evidence the City conditioned further bargaining on AFSCME agreeing to its proposal that the parties withdraw their unfair practice charges. More importantly, the City's alleged conditional bargaining occurred after AFSCME had twice refused to bargain over the City's release time proposal. AFSCME alleges that the City imposed conditions on further bargaining at the October 3 meet and confer session. Yet AFSCME had already refused to bargain on September 7 and 12. Therefore, because it had not yet occurred, the City's later conduct could not provide justification for AFSCME's earlier refusals to bargain.

REMEDY

LA-CE-316-M

The proposed order requires the City to "undo its retaliatory actions" by restoring Moorman's presidential release time to five days per week until she leaves office or the parties agree otherwise. This remedy was based on the ALJ's finding that the City retaliated against Moorman by reducing her release time. As discussed above, we disagree with this finding and instead find that only the City's investigation and demand for reimbursement of release time were retaliatory actions. Accordingly, the proper remedy is for the City to cease and desist from any efforts to discipline Moorman for use of presidential release time in excess of three

days per week between January and June 2006 and/or any efforts to obtain reimbursement from Moorman for presidential release time taken during that period. We also agree with the ALJ that a notice posting is appropriate in this case.

LA-CO-43-M

The proposed order requires AFSCME to meet and confer in good faith upon request over the issue of presidential release time. The City excepts to the order on the ground that the remedy does not make the City whole because "it does not provide restitution to the City for the days of release time [AFSCME] acquired as a result of their unlawful action" in refusing to bargain. This argument rests on the assumption that had the parties negotiated over the City's presidential release time proposal, AFSCME would have agreed to something less than the three days per week established in the 2002 Agreement. However, there is no way for PERB to ascertain what agreement the parties would have reached or when they would have reached agreement. Thus, because any "loss of release time" caused by AFSCME's conduct is purely speculative, the City's requested remedy is unwarranted. (State of California (Department of Transportation) (1981) PERB Decision No. 159b-S.) For this reason, we adopt the ALJ's proposed order as the order of the Board itself.

ORDER

Case No. LA-CE-316-M

Upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that the City of Torrance (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503 and 3506, and Public Employment Relations Board (PERB) Regulation 32603(a) and (b) (Cal. Code of Regs., tit. 8, sec. 31001 et seq.), by threatening Jeannie Moorman (Moorman) with disciplinary action and demanding reimbursement for 19.9 days of allegedly unauthorized release time in retaliation for

Moorman's engagement in protected activity. It is also found that this conduct violated MMBA sections 3503 and 3506, and PERB Regulation 32603(a) and (b), by interfering with Moorman's and Torrance Municipal Employees, AFSCME Local 1117's (AFSCME) exercise of MMBA-guaranteed rights.

Pursuant to Government Code sections 3509(a) and 3541.5(c), it is hereby ORDERED that the City, its governing council, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Threatening disciplinary action, demanding reimbursement of release time, or otherwise retaliating against employees because of their exercise of protected rights.

2. Interfering with employees' right to participate in the activities of an employee organization of their own choosing.

3. Denying recognized employee organizations the right to represent their members.

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

1. Cease and desist from any efforts to discipline Moorman for use of presidential release time in excess of three days per week between January and June 2006 and/or any efforts to obtain reimbursement from Moorman for presidential release time taken during that period.

2. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations where notices to employees are customarily posted, copies of the Notice attached hereto. The Notice must be signed by an authorized agent of the City, indicating the City 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.

3. 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. The City 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 AFSCME.

Case No. LA-CO-43-M

Upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that Torrance Municipal Employees, AFSCME Local 1117 (AFSCME) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3505, and Public Employment Relations Board (PERB) Regulation 32604(c) (Cal. Code of Regs., tit. 8, sec. 31001 et seq.), by refusing to meet and confer over the City of Torrance's (City) proposal to reduce presidential release time to one day per week.

Pursuant to Government Code sections 3509(a) and 3541.5(c), it is hereby ORDERED that AFSCME, its governing body, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to meet and confer with the City upon proper request over matters within the scope of representation.

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

1. Meet and confer with the City upon proper request over the subject of presidential release time for the AFSCME president.

2. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations where AFSCME customarily posts notices to its

members, copies of the Notice attached hereto. The Notice must be signed by an authorized agent of AFSCME, indicating AFSCME 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.

3. 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. AFSCME 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 the City.

Chair Neuwald and Member McKeag joined in this Decision.

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-316-M, Torrance Municipal Employees, AFSCME Local 1117 v. City of Torrance, in which all parties had the right to participate, it has been found that the City of Torrance violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503 and 3506, and Public Employment Relations Board Regulation 32603(a) and (b), by retaliating against Jeannie Moorman (Moorman) for her exercise of protected rights and interfering with Moorman and AFSCME Local 1117's exercise of protected rights.

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

A. CEASE AND DESIST FROM:

1. Threatening disciplinary action, demanding reimbursement of release time, or otherwise retaliating against employees because of their exercise of protected rights.

2. Interfering with employees' right to participate in the activities of an employee organization of their own choosing.

3. Denying recognized employee organizations the right to represent their members.

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

1. Cease and desist from any efforts to discipline Moorman for use of presidential release time in excess of three days per week between January and June 2006 and/or any efforts to obtain reimbursement from Moorman for presidential release time taken during that period.

Dated: _____ CITY OF TORRANCE

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.

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-CO-43-M, City of Torrance v. Torrance Municipal Employees, AFSCME Local 1117, in which all parties had the right to participate, it has been found that the Torrance Municipal Employees, AFSCME Local 1117 (AFSCME), violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3505 and Public Employment Relations Board Regulation 32604(c), by refusing to meet and confer over the City of Torrance's (City) proposal to reduce presidential release time to one day per week.

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 meet and confer with the City upon proper request over matters within the scope of representation.

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

1. Meet and confer with the City upon proper request over the subject of presidential release time for the AFSCME president.

Dated: _____

TORRANCE MUNICIPAL EMPLOYEES,
AFSCME LOCAL 1117

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.