STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1997, Charging Party, v. CITY OF RIVERSIDE, Respondent.	Case No. LA-CE-347-M PERB Decision No. 2027-M May 19, 2009

Appearances: Weinberg, Roger & Rosenfeld by James Rutkowski, Attorney, for Service Employees International Union, Local 1997; Roth Carney Knudsen by Richard D. Roth, Attorney, for City of Riverside.

Before Neuwald, Wesley and Dowdin Calvillo, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the City of Riverside (City) and Service Employees International Union, Local 1997 (SEIU), to the proposed decision of an administrative law judge (ALJ). The ALJ concluded that the City violated the Meyers-Milias-Brown Act (MMBA)[1] by changing the criteria for promoting mini-bus drivers without providing SEIU with notice and an opportunity to request to meet and confer over the change.

The Board has reviewed the proposed decision and the record in light of the exceptions, briefs and relevant law. Based on this review, we affirm the violation found by the ALJ for the reasons discussed below.

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

BACKGROUND

The Special Transportation Division (Division) of the City's Parks, Recreation and Community Services Department provides mini-bus transportation throughout the City for senior citizens and disabled individuals. At the time of the hearing in this matter, the Division employed 27 mini-bus drivers. Eleven of those drivers were full-time, 11 were 3/4 time (up to 39 hours per week), one was half time (up to 29 hours per week), and four were employed on a temporary, part-time basis, working up to 19 hours per week.

Mini-bus drivers, except those employed on a temporary, part-time basis, are members of a City bargaining unit represented by SEIU. In 1999, SEIU filed a grievance over the method the Division used to select mini-bus drivers to fill positions with a higher time base, e.g. to move from three-fourths time to full-time. To resolve the grievance, the City and SEIU entered into a written agreement (1999 Agreement) that stated in full:

> Minibus Driver Promotion by Seniority Proposal
>
> I. Seniority is defined as an employee's first date of service working within either of the following positions with the Special Transportation section of the Park and Recreation Department of the City of Riverside: Minibus Driver full-time, Minibus Driver 3/4 time, Minibus Driver 1/2 time, Minibus Driver (non-benefited). If an employee has held more than one of the positions listed above, the earliest date shall be used for his or her seniority.
>
> II. Effective immediately, vacancies for the following positions within the Special Transportation section of the Parks and Recreation Department of the City of Riverside will be filled as follows:
>
> A. Minibus Driver 3/4 time shall be promoted to Minibus Driver full-time in order of seniority with the following restrictions:
>
> 1. With no discipline imposed within the preceding 12 months.

2. Whose overall ratings have been satisfactory or above for the preceding 12 months.

B. Minibus Driver 1/2 time promotion to Minibus Driver 3/4 time, or Minibus Driver full-time are subject to conditions A-1 and A-2 above.

C. Minibus Driver (non-benefited) promotion to Minibus Driver 1/2, 3/4 or full-time shall be subject to conditions A-1 and A-2 above.

III. Employees promoted to Minibus Driver full-time, 3/4 time or 1/2 time shall not be subject to a promotional probationary period.

IV. Employees who decline a promotion, or are denied a promotion based on A-1 or A-2 above, shall be notified in writing. This notification will be signed by the employee.

The 1999 Agreement was signed by an SEIU representative, the City's human resources director and the director of the Parks and Recreation Department. Neither the 1999 Agreement itself nor its terms were ever incorporated into any memorandum of understanding (MOU) between the City and SEIU. From July 1999 through the end of 2005, the Division promoted mini-bus drivers in accordance with the 1999 Agreement.

In early 2006, the City began preparing to negotiate successor MOUs with the various employee organizations representing City employees. As part of these preparations, Assistant City Manager Thomas DeSantis (DeSantis), the City's lead negotiator, briefed the City Council on the existence of side letters between City management and employee organizations that conflicted with terms of the prior MOUs formally approved by the council. In response, the City Council instructed DeSantis to make the new successor MOUs "all inclusive." Accordingly, the City adopted a negotiating position during the 2006 negotiations that all side letters would be superseded by the successor MOU unless the terms of the letters were made a part of the MOU.

In the spring of 2006, the City and SEIU began negotiations for a successor MOU covering the period July 1, 2006, through June 30, 2010. At the first bargaining session, the City presented SEIU with a proposal containing language to the effect that the MOU would supersede all side letters. SEIU chief negotiator Deborah Cortez (Cortez) testified that at some point during negotiations, she asked Dan Cassidy (Cassidy), an attorney representing the City, to clarify which side letters the City thought the MOU should supersede. In response, someone on the City's bargaining team produced a copy of the 1999 Agreement. Cortez told Cassidy that the 1999 Agreement was a "grievance resolution," not a side letter. The City did not respond to Cortez's statement. Cortez testified that DeSantis was part of "the cast of characters that were [at negotiation sessions] usually all the time," but could not specifically recall him being present during her discussion of the 1999 Agreement with Cassidy. DeSantis testified that he attended every bargaining session but was unaware of a conversation about the 1999 Agreement. He also testified that the "minibus driver promotion process . . . was the gorilla in the room" during negotiations.

Also during these negotiations, SEIU proposed to add language to the MOU provision governing promotions that would define the movement of an employee from a lower time base position to a higher time base position within the same classification as a "status change" rather than a promotion and that such "status changes" would be governed strictly by seniority. This proposed language would have the effect of making the promotion by seniority system set forth in the 1999 Agreement applicable to all members of the bargaining unit.

On July 25, 2006, the City presented SEIU with a comprehensive proposal. That evening, shortly before the scheduled start of a City Council meeting, Cortez went to DeSantis' office to discuss the proposal. DeSantis testified that members of the City's bargaining team "were in and out of the room," but that only he and Cortez discussed the proposal. Cortez and

DeSantis indicated to each other that they wanted to resolve negotiations before the council meeting. They then went through the proposal item by item, with both initialing each item as they reached agreement.

When they reached item 10 regarding promotions, Cortez agreed to withdraw SEIU's proposed "status change" language. Cortez then handwrote a memorandum that stated in full: "We have agreed to move off status change language to move forward. We will proceed with this matter through the grievance process." DeSantis wrote at the bottom of the memorandum: "Acknowledge Union's position on this matter."

When Cortez and DeSantis reached item 15 regarding side letters, Cortez proposed to delete the language "MOU will supersede all Side Letters." DeSantis responded that the City would not agree to remove the language. Cortez then proposed to keep the supersession language with the addition of language excluding grievance resolutions from being superseded. DeSantis agreed to the proposal. Cortez then handwrote above the supersession language: "Both parties recognize that this excludes grievance resolutions documents." Cortez and DeSantis initialed the added language.

Cortez testified she and DeSantis did not discuss what constituted "grievance resolutions documents," nor did they discuss the 1999 Agreement. Cortez testified that her intent in adding the "grievance resolutions" language was to preserve the 1999 Agreement. DeSantis testified that he believed the "grievance resolutions" language was intended to preserve SEIU's right to grieve the status change issue in the future and the City never would have agreed to the language if it was intended to preserve the 1999 Agreement. He also testified that he was unaware of the existence of the 1999 Agreement until just a few weeks before the PERB hearing, though he admitted he knew in 2006 that the Division had a practice of promoting mini-bus drivers according to seniority.

The 2006-2010 MOU, approved by the City Council on August 8, 2006, contains the following relevant provisions:

> **Article 15, Section 1, Promotions**
>
> For promotions within the bargaining unit, the City shall first consider qualified employee applicants; the City will select the applicant who, in the City's judgment and discretion, is best qualified by virtue of skills, abilities, experience and other qualifications as defined in the job description and/or outlined in the City's posting for vacancy; in the event of a tie between two or more competing applicants, the employee with the greatest City seniority shall be selected. The City reserves the right to hire from outside the City if it is not satisfied with the qualifications of the applicants. The City will first offer interviews to the most qualified internal applicants.
>
> **Article 30, Subsection E**
>
> This Memorandum of Understanding will supercede all Side Letters. Both parties recognize that this excludes grievance resolutions documents.

The Division did not promote any mini-bus drivers from January 1, 2006 through October 19, 2006. Beginning on October 20, 2006, mini-bus drivers were promoted in accordance with Article 15, Section 1, of the MOU, instead of by seniority as had been done from July 1999 through 2005.

ALJ's Proposed Decision

The ALJ ruled that the City made an unlawful unilateral change by promoting mini-bus drivers according to the criteria in Article 15, Section 1, of the MOU beginning October 20, 2006. The ALJ found that the elements for a unilateral change had been met and therefore the only issue in the case was whether SEIU waived its right to meet and confer over the change in promotion criteria. Applying rules of contract interpretation, the ALJ concluded that the MOU superseded the 1999 Agreement. However, the ALJ found this was insufficient to constitute a waiver because it did not clearly indicate SEIU had "consciously yielded" its interest in the

matter of mini-bus driver promotion criteria. The ALJ concluded that the status quo on that issue remained unchanged by the MOU and thus any change from the promotion criteria in the 1999 Agreement must be negotiated with SEIU.

The City's Exceptions

The City excepts to the ALJ's ruling that it made an unlawful unilateral change by altering the existing status quo regarding promotion criteria for mini-bus drivers. The City argues that the MOU lawfully changed the status quo because: (1) the MOU superseded the 1999 Agreement, and (2) SEIU was unsuccessful in incorporating the promotion criteria from the 1999 Agreement into the MOU. Thus, the City asserts, it was merely following the terms of the negotiated MOU when it ceased to promote mini-bus drivers based on seniority. The City also excepts to the ALJ's proposed remedy as "harsh and inappropriate under the circumstances" because it would require demotion of incumbent mini-bus drivers.

SEIU's Exception and Response

SEIU excepts to the ALJ's conclusion that the 2006-2010 MOU superseded the 1999 Agreement. SEIU contends that the 1999 Agreement was a "grievance resolution document" and therefore, pursuant to MOU Article 30, subsection E, it continued in full effect after the MOU was adopted. In response to the City's exceptions, SEIU asserts that it did not waive its right to meet and confer over promotion criteria for mini-bus drivers because: (1) MOU Article 30, subsection E, did not constitute an intentional relinquishment of that right, and (2) SEIU's abandonment of its proposal to expand the seniority promotion criteria to the entire bargaining unit did not change the status quo regarding promotion criteria for mini-bus drivers.

DISCUSSION

1. Request for Oral Argument

Pursuant to PERB Regulation 32315, the City has filed a request for oral argument.[2] Historically, the Board has denied requests for oral argument when an adequate record has been prepared, the parties had ample opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear to make oral argument unnecessary. (*Antelope Valley Health Care District* (2006) PERB Decision No. 1816-M; *Arvin Union School District* (1983) PERB Decision No. 300.) Based on our review of the record, all of the above criteria are met in this case. Therefore, the City's request for oral argument is denied.

2. Unilateral Change

In determining whether a party has violated MMBA section 3505 and PERB Regulation 32603(c)[3] by refusing or failing to meet and confer in good faith, 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

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[2] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32315 provides in full:

> A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument.

[3] PERB Regulation 32603(c) provides: "It shall be an unfair practice for a public agency to . . . [r]efuse 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."

Decision No. 143.)[4] A unilateral change is a "per se" violation if the following criteria are met: (1) the respondent breached or altered the parties' written agreement or its own established past practice; (2) such action was taken without giving the other party notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach of the contract, but amounts to a change in policy (i.e., it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802; *Walnut Valley Unified School District* (1981) PERB Decision No. 160; *San Joaquin County Employees Association v. City of Stockton* (1984) 161 Cal.App.3d 813; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

a. Breach of Written Agreement

The complaint alleged that the City made an unlawful unilateral change on October 20, 2006, when it ceased to promote mini-bus drivers based on seniority and began promoting drivers based on the criteria set forth in Article 15, Section 1, of the 2006-2010 MOU. SEIU contends that the 1999 Agreement to promote mini-bus drivers by seniority remained in effect on the date of the change, while the City asserts that the MOU was the only written agreement governing promotions in effect at that time. Thus, in order to determine whether the City breached a written agreement, it is first necessary to decide whether the 1999 Agreement survived the adoption of the 2006-2010 MOU. This requires us to interpret the meaning of Article 30, subsection E, the supersession provision of the MOU.

[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.)

"PERB may interpret contract language if doing so is necessary in deciding an unfair practice charge case." (*County of Ventura* (2007) PERB Decision No. 1910-M.) Traditional rules of contract law guide interpretation of a collective bargaining agreement between a public employer and a recognized employee organization. (*National City Police Officers' Assn. v. City of National City* (2001) 87 Cal.App.4th 1274, 1279; *Grossmont Union High School District* (1983) PERB Decision No. 313.)

"A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." (Civ. Code, § 1636.) Where contractual language is clear and unambiguous, it is unnecessary to go beyond the plain language of the contract itself to ascertain its meaning. (Civ. Code, § 1638; *Marysville Joint Unified School District* (1983) PERB Decision No. 314.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.) Thus, "the Board must avoid an interpretation of contract language which leaves a provision without effect." (*State of California (Department of Corrections)* (1999) PERB Decision No. 1317-S.)

Article 30, subsection E, states in full:

> This Memorandum of Understanding will supercede all Side Letters. Both parties recognize that this excludes grievance resolutions documents.

The parties offer contrary interpretations of this language. The City asserts the language indicates that the 1999 Agreement was superseded by the MOU, while SEIU contends the language prevented the 1999 Agreement from being superseded by the MOU. Because the provision does not explicitly mention the 1999 Agreement, and it is unclear whether the 1999 Agreement is a side letter or a grievance resolution document under the provision, we find that

the plain language of Article 30, subsection E, is ambiguous regarding supersession of the 1999 Agreement.

If contract language is ambiguous, the Board may consider extrinsic evidence, such as bargaining history, to ascertain the meaning of contractual terms. (*Barstow Unified School District* (1997) PERB Decision No. 1138b; *Los Angeles Unified School District* (1984) PERB Decision No. 407.) The City's initial proposal for the 2006-2010 MOU contained language that all side letters would be superseded by the MOU. During negotiations, Cortez, SEIU's chief negotiator, asked Cassidy, an attorney representing the City, which side letters the City intended to be superseded by the new MOU. The City responded by producing a copy of the 1999 Agreement. Cortez replied that the 1999 Agreement was a "grievance resolution document," not a side letter. SEIU continued to characterize the 1999 Agreement in this way throughout negotiations; the City never responded to SEIU's characterization of the document. Further, no other document that resulted from resolution of a grievance was discussed by the parties during negotiations. Thus, the bargaining history shows that SEIU intended the exclusionary language in Article 30, subsection E, to shield the 1999 Agreement from supersession by the MOU.

On the other hand, DeSantis testified that he believed the exclusionary language was intended to preserve SEIU's right to grieve the "status change" issue in the future. This is so, he testified, because just prior to proposing the exclusion language Cortez had indicated SEIU would pursue the "status change" issue through the grievance process. However, this interpretation of Article 30, subsection E, is not reasonable in light of the fact that the City knew SEIU considered the 1999 Agreement to be a "grievance resolution document." At the PERB hearing, DeSantis denied knowledge of the 1999 Agreement prior to 2007 and said he was unaware of any conversation regarding the 1999 Agreement during bargaining in 2006.

Yet he also testified that he attended all bargaining sessions, that he was aware of the Division's practice of promoting mini-bus drivers according to seniority and that the "minibus driver promotion process . . . was the gorilla in the room" during negotiations. Given the importance of the mini-bus driver promotion issue to both parties, it is implausible that DeSantis could have gone through the entire negotiation process without learning that SEIU considered the 1999 Agreement to be a "grievance resolution document." Accordingly, his testimony that he was unaware that the exclusionary language in Article 30, subsection E, referred to the 1999 Agreement lacks credibility. Therefore, the bargaining history fails to support the City's interpretation of Article 30, subsection E.

Furthermore, the City's interpretation of Article 30, subsection E, is contrary to the plain language of the provision and would leave the second sentence without effect. Contract language is to be given its ordinary meaning unless the parties have mutually placed a special meaning on the language. (Civ. Code, § 1644; *Marin Community College District* (1995) PERB Decision No. 1092.) "Supersede" means "To take the place of; replace or succeed." (American Heritage Dict. (new college ed. 1980) p. 1292.) There is no indication the parties intended for "supercede" in Article 30, subsection E, to mean anything different than the standard dictionary definition. Therefore, the first sentence of the subsection states that the MOU will replace all side letters, while the second sentence excludes "grievance resolutions documents" from being replaced by the MOU. Because only something in existence can be replaced, the second sentence by its terms applies only to existing documents, not to future documents as the City contends. Indeed, the City could have included the word "future" in the sentence to signal its intent but did not do so. Nonetheless, the City's interpretation would leave the second sentence without effect because no future grievance resolution documents would exist at the time the MOU became effective and thus there would be nothing to exclude

from supersession. Accordingly, in light of the Civil Code's instruction to interpret a contract "so as to give effect to every part," we find that Article 30, subsection E, is not reasonably susceptible to the interpretation advanced by the City.

For the reasons above, we conclude that, pursuant to Article 30, subsection E, the 2006-2010 MOU did not supersede the 1999 Agreement and therefore the 1999 Agreement remained in full effect on October 20, 2006. Accordingly, the City's promotion of mini-bus drivers by criteria other than seniority beginning on that date constituted a breach of the parties' written agreement.

b. Notice or Opportunity to Meet and Confer

In its exceptions, the City asserts that no unilateral change occurred because the City notified SEIU of its intention to eliminate the 1999 Agreement at the start of negotiations and the parties bargained over promotion by seniority for the entire bargaining unit. While these assertions are true, they do not establish that the City provided SEIU with notice or an opportunity to meet and confer over the change that occurred on October 20, 2006. As found above, the MOU did not supersede the 1999 Agreement. Therefore, that agreement remained in full effect on October 20, 2006, and the City was obligated to bargain with SEIU before changing any terms of the Agreement. Because the City did not provide SEIU with notice or the opportunity to meet and confer before implementing the change in mini-bus driver promotion criteria, the second element of the unilateral change test has been met.

c. Change in Policy

A breach of the MOU constitutes a unilateral change in violation of the MMBA only if the breach has "a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members." (*Grant Joint Union High School District, supra.*) The Board has found a "continuing impact" when the breaching party asserts the change was

authorized by the collective bargaining agreement because this indicates the party will continue to apply the new policy in the future. (*Fremont Unified School District* (1997) PERB Decision No. 1240; *Hacienda La Puente Unified School District* (1997) PERB Decision No. 1186.) Here, the City claims that Article 15, Section 1, of the 2006-2010 MOU allows it to promote mini-bus drivers based on criteria other than seniority. Therefore, because the City has indicated it will continue to apply this policy in the future, the breach constitutes a change in policy.

d. Matter within the Scope of Representation

The parties do not dispute that promotion criteria and procedures for filling vacancies are within the scope of representation. (*Fire Fighters Union v. City of Vallejo*, *supra*, 12 Cal.3d at p. 618; *International Assn. of Fire Fighters Union v. City of Pleasanton* (1976) 56 Cal.App.3d 959, 971; *Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1984) PERB Decision No. 375.)

Because all four elements of the unilateral change test have been met, we conclude that the City violated MMBA section 3505 and PERB Regulation 32603(c) when it ceased to promote mini-bus drivers based on seniority pursuant to the 1999 Agreement without providing SEIU with notice or an opportunity to request to meet and confer over the change.

3. Remedy

As part of the proposed remedy, the ALJ ordered the City to retroactively promote mini-bus drivers according to the 1999 Agreement. The City excepts to this remedy as "harsh and inappropriate under the circumstances" because it would require demotion of incumbents. SEIU responds it is likely that many of the drivers promoted since October 20, 2006, would have been promoted anyway under the 1999 Agreement criteria and, therefore, the practical effect of the Board's order will be minimal.

The normal remedy for a unilateral change is to restore the status quo by rescinding the change and making affected employees whole for any losses suffered as a result of the change. (*California State Employees Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 946.) However, when the unilateral change results in a benefit to members of the bargaining unit, PERB will not order the benefit rescinded. (*Nevada Joint Union High School District* (1985) PERB Decision No. 557.) When an employee is promoted as a result of the employer's unlawful failure to promote another employee, PERB has found the remedial purpose of the applicable Act is not served by ordering rescission of the innocent employee's promotion. (*State of California (Department of Corrections)* (2001) PERB Decision No. 1435-S; *State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S; see *Denver Post Corp.* (1999) 328 NLRB 118, 126 [employer unilaterally promoted bargaining unit members; NLRB ordered promotions rescinded only if union requested rescission].) In such cases, the Board has ordered the employer to offer the affected employee the next available position equivalent to the one unlawfully denied or to place the employee at the top of the promotion list for such a position, as well as pay the affected employee appropriate monetary relief. (*State of California (Department of Corrections)*, *supra*; *State of California (Department of Parks and Recreation)*, *supra*.)

The City's unilateral change in promotion criteria for mini-bus drivers resulted in the promotion of drivers who would not have been promoted had the City abided by the 1999 Agreement to promote by seniority. However, it would not effectuate the remedial purpose of the MMBA to invalidate the promotions of these innocent drivers. Instead, we shall order the City to restore those drivers who would have been promoted based on seniority to the position they would be in but for the unilateral change by: (1) reinstating the promotion criteria set forth in the 1999 Agreement, thereby moving those drivers with the most seniority to the top of

the promotion list; and (2) paying the drivers wages and benefits they would have received had they been promoted according to the 1999 Agreement, from the date the driver would have been promoted under the prior policy to the date the driver is/was promoted to the higher time base position.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that the City of Riverside (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505, and 3506, and Public Employment Relations Board (PERB) Regulation 32603(a), (b) and (c) (Cal. Code Regs., tit. 8, sec. 31001 et seq.), by ceasing to promote mini-bus drivers based on seniority as required by the parties' July 1999 written grievance resolution without providing Service Employees International Union, Local 1997 (SEIU), with notice or an opportunity to request to meet and confer over the change.

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. Implementing any change in policy regarding the method by which mini-bus drivers working at a lower time base are selected to fill vacant mini-bus driver positions with a higher time base without first notifying and providing SEIU, upon request, with an opportunity to meet and confer over the change.

2. Interfering with the right of employees to be represented by SEIU by the conduct described in paragraph A.1. above.

3. Denying SEIU the right to represent employees by the conduct described in paragraph A.1. above.

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

1. Rescind the policy change implemented on October 20, 2006, regarding the method by which mini-bus drivers working at a lower time base are selected to fill vacant mini-bus driver positions with a higher time base and restore the previous policy as contained in the Minibus Driver Promotion by Seniority Proposal grievance resolution of July 1999.

2. Reimburse mini-bus drivers for wages and benefits they would have received had the City not unilaterally changed its promotion policy, from the date the driver would have been promoted under the prior policy to the date the driver is/was promoted to the higher time base position. This award shall include interest at the rate of seven (7) percent per annum.

3. 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.

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. 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 SEIU.

Members Neuwald and Wesley 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-347-M, *Service Employees International Union, Local 1997 v. City of Riverside*, in which all parties had the right to participate, it has been found that the City of Riverside (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505, and 3506, by ceasing to promote mini-bus drivers based on seniority as required by the parties' July 1999 written grievance resolution without providing Service Employees International Union, Local 1997 (SEIU), with notice or an opportunity to request to meet and confer over the change.

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

A. CEASE AND DESIST FROM:

1. Implementing any change in policy regarding the method by which mini-bus drivers working at a lower time base are selected to fill vacant mini-bus driver positions with a higher time base without first notifying and providing SEIU, upon request, with an opportunity to meet and confer over the change.

2. Interfering with the right of employees to be represented by SEIU by the conduct described in paragraph A.1. above.

3. Denying SEIU the right to represent employees by the conduct described in paragraph A.1. above.

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

1. Rescind the policy change implemented on October 20, 2006, regarding the method by which mini-bus drivers working at a lower time base are selected to fill vacant mini-bus driver positions with a higher time base and restore the previous policy as contained in the Minibus Driver Promotion by Seniority Proposal grievance resolution of July 1999.

2. Reimburse mini-bus drivers for wages and benefits they would have received had the City not unilaterally changed its promotion policy, from the date the driver would have been promoted under the prior policy to the date the driver is/was promoted to the higher time base position. This award shall include interest at the rate of seven (7) percent per annum.

Dated: _____ CITY OF RIVERSIDE

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.