STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Charging Party, v. COUNTY OF SACRAMENTO, Respondent.	Case No. SA-CE-505-M PERB Decision No. 2045-M June 30, 2009

Appearances: Weinberg, Roger & Rosenfeld, by Matthew J. Gauger, Attorney, for Service Employees International Union, Local 1021; Krista C. Whitman, Supervising Deputy County Counsel, for County of Sacramento.

Before McKeag, Neuwald and Wesley, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Sacramento (County) to a proposed decision (attached) by an administrative law judge (ALJ). The charge alleged that the County unilaterally changed the eligibility criteria for current employees-future retirees' participation in the Retiree Health Insurance Program (RHIP)/Retiree Medical and Dental Insurance Program (RMDIP) by discontinuing subsidies for medical and dental insurance for employees retiring after June 1, 2007, in violation of the Meyers-Milias-Brown Act (MMBA).[1] The ALJ found that the County unilaterally changed a policy within the scope of bargaining without

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

meeting its obligation to negotiate with exclusive representative Service Employees International Union, Local 1021 (SEIU Local 1021).

The Board reviewed the entire record in this case, including the unfair practice charge, unfair practice complaint, the stipulated record of 33 undisputed/stipulated facts and 43 joint exhibits, four charging party exhibits, the ALJ's proposed decision, the County's statement of exceptions, SEIU Local 1021's response thereto, and the parties' briefs. Based upon this review, the Board adopts the ALJ's proposed decision as the decision of the Board itself subject to the following discussion.

FACTS

While the ALJ correctly summarized the facts, we found a stipulated fact omitted and supplement the ALJ's findings: SEIU Local 1021 and the County began bargaining in Spring 2006. The County presented a Retiree Health Savings Plan (RHSP) as a portable plan for active employees, and did not say that its proposal would replace the then current benefit. The County later explained that employees retiring after January 1, 2007 would only receive a health insurance offset if they had a combined age and years of service of at least 60. The union was not interested in having its members pay into the plan. The County proposed that it would pay $25.00 into each employee's RHIP each pay period. SEIU Local 1021 had no objection so long as this sum was not included as part of the cost of the union's proposals. The parties agreed to this arrangement as part of a total contract language.

DISCUSSION

The Board notes that the only case cited in the County's exceptions that was not in its post-hearing brief to the ALJ is *Courier-Journal* (2004) 342 NLRB No. 113. The case is offered to show that there is no enforceable past practice by the County in providing the subsidies because the amount of the benefit had changed many times since 1980, generally

increasing but also decreasing several times. The case is distinguishable because the contract language authorized the employer to make changes in health care premiums during the contract, and the employer had a past practice for more than ten years of making such changes during the successive contracts and hiatus periods between contracts. Here, a 27-year past practice of awarding retiree health subsidies was unilaterally discontinued.

PERB possesses broad discretion to take action and issue orders as necessary to effectuate the purposes and policies of the MMBA. (MMBA § 3509.) In carrying out this statutory mandate, PERB is authorized to issue a decision and order directing an offending party to cease and desist from the unfair practice. (*Id.*) In addition to a cease and desist order, PERB has the authority and long standing practice of ordering a restoration of the status quo ante for unilateral change violations. (*County of Sacramento* (2008) PERB Decision No. 1943-M.) This is typically accomplished by requiring the employer to rescind the unilateral change and make employees whole for losses suffered as a result of the unlawful unilateral change.[2]

In the present case, the Board finds that the County committed an unfair labor practice. Specifically, the County unilaterally implemented the changes in eligibility to participate in the RHIP/RMDIP without fulfilling its obligation to bargain in good faith with the exclusive representative. Thus, the Board orders the County to rescind the unilateral change and return to the status quo as it would have been had the policy not been implemented effective June 1,

[2] The County argues that PERB cannot order a make whole remedy because it lacks jurisdiction over retirees. However, in *Holtville Unified School District* (1982) PERB Decision No. 250, two teachers forced into retirement pursuant to a unilaterally implemented mandatory retirement policy were awarded back salary they would have received as re-employed year-to-year teachers from the time they retired, offset by retirement benefits. In *Corning Union High School District* (1984) PERB Decision No. 399, the make whole remedy was time off corresponding to extra hours worked, and equivalent monetary compensation for teachers no longer employed by the district. Consequently, the County's argument is rejected.

2007. Further, in order to mitigate the consequences of that action, the Board orders the County to make whole all those impacted by the unlawful change, plus interest at the legal rate.

ORDER

Upon the foregoing findings of facts, conclusions of law, and the entire record in this case, it is found that the County of Sacramento (County) 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, § 31000 et seq.).

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

A. CEASE AND DESIST FROM:

1. Unilaterally implementing the June 5, 2007 changes in eligibility for current employees-future retirees to participate in the Retiree Health Insurance Program (RHIP)/Retiree Medical and Dental Insurance Program (RMDIP) without fulfilling its obligation to bargain in good faith with the exclusive representative, Service Employees International Union, Local 1021 (SEIU Local 1021).

2. Denying SEIU Local 1021 it's right to represent bargaining unit employees by failing and refusing to meet and negotiate about matters within the scope of representation as defined by MMBA section 3504, with particular reference to the modification of future retiree health benefits.

3. Interfering with unit employees' rights to be represented by their exclusive representative in meeting and negotiating with the County on matters within the scope of representation.

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

1. Rescind the changes in eligibility to participate in the RHIP/RMDIP adopted on June 5, 2007.

2. Make whole all those affected by the June 5, 2007 changes in eligibility for lost benefits, monetary and otherwise, plus interest at the rate of seven percent per annum.

3. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations in the County where notices to employees are customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that the County 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 County 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 Local 1021.

Members McKeag 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. SA-CE-505-M, *Service Employees International Union, Local 1021 v. County of Sacramento*, in which all parties had the right to participate, it has been found that the County of Sacramento (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505 and 3506, and Public Employment Relations Board Regulation 32603, subdivisions (a), (b) and (c) (Cal. Code Regs., tit. 8, § 31000 et seq.).

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

A. CEASE AND DESIST FROM:

1. Unilaterally implementing the June 5, 2007 changes in eligibility for current employees-future retirees to participate in the Retiree Health Insurance Program (RHIP)/Retiree Medical and Dental Insurance Program (RMDIP) without fulfilling its obligation to bargain in good faith with the exclusive representative, Service Employees International Union, Local 1021 (SEIU Local 1021).

2. Denying SEIU Local 1021 it's right to represent bargaining unit employees by failing and refusing to meet and negotiate with the exclusive representative about matters within the scope of representation as defined by MMBA section 3504, with particular reference to the modification of future retiree health benefits.

3. Interfering with unit employees' rights to be represented by their exclusive representative in meeting and negotiating with the County on matters within the scope of representation.

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

1. Rescind the changes in eligibility to participate in the RHIP/RMDIP adopted on June 5, 2007.

2. Make whole all those affected by the June 5, 2007 changes in eligibility for lost benefits, monetary and otherwise, plus interest at the rate of seven percent per annum.

Dated: _____ COUNTY OF SACRAMENTO

By: _____
Authorized Agent

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SEIU LOCAL 1021, Charging Party, v. COUNTY OF SACRAMENTO, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-505-M PROPOSED DECISION (June 16, 2008)

Appearances: Weinberg, Roger & Rosenberg, by Matthew J. Gauger and Gary P. Provencher, Attorneys for Service Employees International Union Local 1021; Krista Whitman, Supervising Deputy County Counsel for the County of Sacramento.

Before Bernard McMonigle, Chief Administrative Law Judge.

In this case, public employee unions allege that a public employer violated its obligation to bargain when it unilaterally discontinued a retirement medical benefit for employees who retired after June 1, 2007. The employer denies committing an unfair practice.

PROCEDURAL HISTORY

On September 27, 2007, Service Employees International Union Local 1021 (SEIU) filed an unfair practice charge against the County of Sacramento (County). On October 9, 2007, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint alleging that the County had violated the Meyers-Milias-Brown Act (MMBA or Act)[1] when it eliminated a medical and dental insurance subsidy for current employees without meeting and conferring in good faith with their exclusive representative.[2]

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

[2] The complaint alleges that through its action, the County violated Government Code section 3505 and PERB Regulation 32603(c).

Similar unfair practice charges were filed by five other employee organizations that exclusively represent bargaining units with the County. In each case the PERB Office of the General Counsel issued complaints similar to that in the SEIU matter.

On July 3, 2007, an unsuccessful informal settlement conference was conducted between the County and SEIU. Settlement conferences were waived in the other cases.

On August 30, 2007, the County made a motion to consolidate the cases. Because four matters would be heard on identical facts, they were consolidated for a formal hearing on January 10, 2008.

Two cases (including the SEIU matter) required additional testimony and exhibits not common to the others. Accordingly, they were not consolidated but were heard on January 10 and January 11, 2007.

All briefs were served February 29, 2008, and the matters submitted.

FACTS

At the hearing, the parties presented a Statement of Undisputed/Stipulated Facts and an agreed upon set of joint exhibits. The relevant facts are as follows.

> The County of Sacramento ("County") is a California county and a public agency as defined by Government Code section 3501(c) and an employer of public employees as defined by Government Code section 3501(d).
>
> SEIU Local 1021 ("SEIU") is the recognized exclusive bargaining representative for the Welfare Supervisory Unit. Employee relations between UPE, AFSCME, SCAA, SCPAA, Teamsters, SEIU and the County are governed by the Meyers-Milias-Brown Act (Government Code section 3500 et seq.).
>
> SEIU [is a] part[y] to a valid memorandum of understanding with the County with terms of July 1, 2006 through June 30, 2011 ("MOU").
>
> Since 1980, based on annual determinations of the Board of Supervisors, eligible County retirees have been provided with

access to group medical and dental plans and to a health insurance offset to assist them with the purchase of medical and dental insurance.

Since 1993, "excess earnings" from the SCERS system have been used as a funding source for retiree medical and dental insurance benefits. The funding source changed in 2003, at which time the County began to fund the program via allocated charges to all County departments.

The Retiree Medical and Dental Insurance Program Administrative Policy in effect for the year 2006 provided that offset payments to retirees are calculated based on the retiree's service credit. As of January 2006, the eligibility criteria for participation in the County's Retiree Health Insurance Program was as follows:

> Individuals who leave active employment with at least 10 years of service in SCERS, or due to industrial or non-industrial disability regardless of years of service, are eligible to participate in the Retiree Health Insurance Program.

On or about January 26, 2006, the County forwarded a written notice to all County bargaining units advising that the Sacramento County Board of Supervisors ("Board") would be holding a public hearing on January 31, 2006 to consider proposed changes to the County's Retiree Health Insurance Program for calendar year 2007. While the County proposed to maintain the existing level of medical offset payments to retirees for calendar year 2007, the County proposed changes in the eligibility requirements for current employees who could participate in the County's Retiree Health Insurance Program after January 1, 2007.

On March 28, 2006, the County Board of Supervisors approved changes to the Retiree Health Insurance Program for 2007, to limit eligibility to:

> Any Annuitant who left County employment on or after January 1, 2007, having worked for at least 10 years in SCERS-covered employment, and having attained at least 60 years of combined age and service prior to January 1, 2007, and who begins receiving SCERS pension payments within 120 days of leaving SCERS-covered employment; or any Annuitant retiring on or after January 1, 2007 who is granted a service-connected disability

retirement from SCERS, regardless of years of service.

During the spring and summer of 2006, the County engaged in On September 12, 2006, the Board of Supervisors approved a revised Retiree Health Insurance Program for 2007, which returned to the 2006 eligibility requirements, deleting the provisions that affect current employees who retire on or after January 2, 2007.

On December 27, 2006, the County sent a letter to its employee organizations informing them that the County Executive would recommend to the Board of Supervisors that it discontinue the retiree health subsidy for all retirees retired on or after January 1, 2008, and for certain previously retired annuitants. The letter contained an offer to meet and confer with the employee organizations on January 10, 2007.

A meeting to discuss the changes was scheduled for January 10, 2007, and the County also offered to schedule individual sessions to discuss implementation of its proposed change. ... SEIU requested to meet and the County and SEIU met on January 25, 2007.

At the January 30, 2007 meeting of the Board of Supervisors, the County Executive recommended that the Board continue subsidizing medical coverage for retirees that retired prior to June 29, 2003 "subject to the meet and confer process with recognized employee organizations" and direct staff to return with an actuarial analysis of four retiree medical and dental insurance program options for the year 2008.

On April 17, 2007, the County withdrew both its offer to negotiate the subject matter and its offer on the retiree health subsidy.

On June 5, 2007, the Board adopted its Retiree Medical and Dental Insurance Program for 2008. The policy provides that participants who retired on or before May 31, 2007, will continue to receive the subsidy, but the subsidy is eliminated for all participants who retire after May 31, 2007.

SEIU ha[s] at all times relevant to this complaint been ready and willing to meet with the County to meet and confer regarding the Policy and funding alternatives for retiree medical and dental benefits.

In addition to the Undisputed/Stipulated Facts, the following facts were established in this matter.

Kathy O'Neil is a human services supervisor who works for the County. She is a member of SEIU and Chapter President for the County bargaining unit. From April to October 2006, she was a union negotiator for a successor collective bargaining agreement. The County's proposed retiree health savings plan was among the topics discussed. Management negotiators explained how the savings plan would benefit current employees in retirement.

O'Neil testified that SEIU negotiators asked County representatives at least three times whether County's proposal would lead to elimination of the retiree health subsidy. According to O'Neil, County Chief Negotiator for the SEIU contract, Susan Murray (Murray), stated that the two programs were not connected.

Ian Arnold is a labor relations representative for SEIU and was the chief union negotiator for the new agreement. Arnold testified that, in response to a question from O'Neil in June 2006, Murray stated that the retiree health subsidy would remain, but on a sliding-scale.

Murray proposed a new retiree health savings plan, whereby the County would add $25 a pay period to an employee retiree health savings account. She explained to union negotiators that the County intended to discontinue the existing retiree subsidy program for employees hired after January 2007.

Murray did not recall SEIU negotiators asking whether the retiree saving plan would replace the retiree health subsidy plan and denied making any representations on that issue. She also testified that the retiree subsidy program was not a subject of negotiations.

After a strike, the parties reached an agreement that includes that retirement health savings plan.

ISSUE

Did the County violate its obligation to bargain on June 5, 2007, when it made a unilateral change in the retirement medical and dental insurance program for current employees retiring after June 1, 2007?

CONCLUSIONS OF LAW

In determining whether a party has violated its obligation to bargain 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 Decision No. 143.)

Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer fulfilled its obligation to bargain. (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.)

Thus, an employer may not make a change in a subject within the scope of bargaining prior to exhausting prospects for an agreement and reaching a genuine impasse. (San Joaquin County Employees Assn. v. City of Stockton, supra, 161 Cal.App.3d 813; Modesto City Schools (1983) PERB Decision No. 291.) The obligation to bargain in good faith does not compel agreement or require concession, but it does require an honest effort to come to terms. (NLRB v. Truitt Mfg. Co. (1956) 351 U.S. 149.) As the Court stated in Public Employees Assn. v. Board of Supervisors (1985) 167 Cal.App.3d 797, 805:

> Moreover, the mere fact that County adamantly insisted on its bargaining position . . . does not suffice to render it guilty of refusal to bargain. (*Wal-Lite Division of United Gypsum Co. v. N.L.R.B.* (8th Cir. 1973) 484 F.2d 108,111.) The law merely requires the parties to maintain a sincere interest in reaching agreement.

Here, the County does not contend that it completed negotiations prior to making the change in the retirement health insurance plan on June 5, 2007.[3] Rather, the County argues the change was outside the scope of bargaining because only retirees were affected and they have no bargaining rights under the MMBA.

It is important to clarify the issue before PERB. This case is not about retiree bargaining rights.[4] The Board long ago determined that retirees are not protected by the Act as they are not persons "employed by" the public employer. (San Leandro Unified School District (1984) PERB Decision No. 450.) Accordingly, a public employer is not required to bargain over their health insurance benefits. (Madera Unified School District (2007) PERB Decision No. 1907.)

Current employees, however, do have bargaining rights protected by the MMBA. Their future retirement benefits, including retirement health benefits, are mandatory subjects of bargaining. (Madera Unified School District, supra, PERB Decision No. 1907.) In making this determination, the Board followed long established principles originally developed under

[3] It is clear that the facts would not support such a theory. On December 27, 2006, the County sent a letter to employee organizations stating its intent to discontinue the retiree health subsidy for employees retiring after a certain date. That letter contained an offer to meet and confer. A few meetings were held but little bargaining took place. On April 17, 2007, the County Director of Labor Relations Steve Lakich sent all employee organizations a withdrawal of the County's offer to negotiate "a permissive subject of bargaining."

[4] Nor does this case address the vesting rights of retirees.

the National Labor Relations Act (NLRA). (Jefferson School District (1980) PERB Decision No. 133; Temple City Unified School District (1989) PERB Decision No. 782.)

In Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co. (1971) 404 U.S. 157 (Pittsburgh Plate Glass), the U.S. Supreme Court addressed retirement health benefits for current employees,

> To be sure, the future retirement benefits of active workers are part and parcel of their overall compensation and hence a well-established statutory subject of bargaining.

The Court reasoned that, by exercising collective bargaining rights, current employees can establish preferences for compensation. Priorities can be set between increasing present income or greater certainty in retirement benefits, including health insurance.

Since Pittsburgh Plate Glass, the NLRB has continued to hold retirement insurance benefits for current employees within the scope of bargaining. In Titmus Optical Co. (1973) 205 NLRB 974, an employer unilaterally determined that it would not provide a life insurance plan for employees who retired after a certain date, and shortly thereafter the benefit was also eliminated for current retirees. While no stated obligation to continue the insurance in retirement was contained in the collective bargaining agreement, it had been established by years of past practice. The NLRB held that the employer had an obligation to bargain over the change in a retirement insurance coverage for current employees.

More recently, the NLRB considered a case in which the employer announced and implemented a cutoff date for significant changes in future retirement medical benefits. (Midwest Power Systems, Inc. (1997) 323 NLRB 404.) A year prior to January 1, 1993, the

employer notified active employees of the changes applicable to those retiring after that date. A provision in the medical plan documents stated:

> In making these benefits available to retirees, while [the employer] expects to continue them indefinitely, specifically retains the right to change the benefits, change the requirements for eligibility, or eliminate the plans altogether at any time without prior notice and this booklet does not constitute a contract or promise by [the employer] to continue benefits.

The NLRB determined that the disclaimer did not relieve the employer of its obligation to bargain changes in the plan affecting current employees. There was no evidence that the union had waived its right to bargain the changes. The NLRB ordered the reinstatement of retirement medical benefits for those who were active employees at the time the benefit was unilaterally changed.

With its brief here, the County contends this case is unlike Midwest Power Systems, stating "[t]he policy at issue . . . was adopted on June 5, 2007, and only applies to those who retired on or after June 1, 2007. Thus, it was not a prospective change in retirement benefits subject to a meet and confer requirement." This is an argument I find difficult to follow and do not accept. First, on June 5 the County made a change which was prospective for all those currently employed on that date. Additionally, as the effective date of the change was June 1, I find that it was a prospective change for all employed at that time.

The County also contends that the Retiree Medical and Dental Insurance Program is a gift rather than an established policy that requires bargaining. That this program is a past practice on a matter within the scope of bargaining was recently determined by the Board itself in County of Sacramento (2008) PERB Decision No. 1943-M. There, the Board found that the County made an unlawful unilateral change in policy in 2006 when it announced a different eligibility adjustment affecting current employees in the same program. Implicit in that

decision is the established principle that a binding policy may be established through a consistent course of conduct that is "historic and accepted practice." (Pajaro Valley Unified School District (1978) PERB Decision No. 51.) The future benefit for current employees at issue here has been in effect since 1980.[6]

The County also argues that the annual reservation clause it placed in its administrative policy for the plan created a right to change or terminate the plan without bargaining.[7] However, the County has not demonstrated that the unions waived their right to negotiate changes in the plan on behalf of current employees.

Waiver of the right to bargain must be "clear and unmistakable." (Amador Valley Joint Union High School District (1978) PERB Decision No. 74.) It will not be lightly inferred and any doubts must be resolved against the party asserting it. (Placentia Unified School District (1986) PERB Decision No. 595.) There is no contractual provision or other writing that demonstrates union acceptance of the reservation clauses. Waiver by conduct requires facts establishing that the subject was fully discussed, explored during negotiations, and the waiving party clearly yielded its interest in the matter. (Compton Community College District (1989) PERB Decision No. 720.) A statement by an employer that it may unilaterally change a mandatory subject of bargaining does not establish a waiver by the union. Waiver of the right to bargain is absent here.

For the reasons discussed, I find the Retiree Medical and Dental Insurance Program is an established past practice that provides a future benefit for current employees.

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[6] Compare to the case cited by the County, NLRB v. Wonder State Mfg. Co. (8th Cir. 1965) 344 F.2d 210. There, a bonus had been awarded in only 3 of 5 years. Lacking in the County's argument was the consistency and regularity of practice of over 20 years found here.

[7] In relevant part, the 2007 disclaimer states, "This policy is effective solely for the calendar year 2007. It does not create any contractual, regulatory, or other vested entitlement to present or future retirees."

SEIU argues that another reason to find the program within the scope of bargaining is that the existing retiree health subsidy was a subject discussed during negotiations. Whether the subject was negotiated is a matter in dispute that needs no resolution. The Board has made clear, "a permissive subject is not transformed into a mandatory subject solely on the basis" of past bargaining or even agreement. (El Centro Elementary School District (2006) PERB Decision No. 1863.)

As stated, the Retiree Medical and Dental Insurance Program is a subject within the scope of bargaining and a change in employee eligibility for the program cannot be made by unilateral action. Bargaining in good faith is required. The County of Sacramento violated its obligation to bargain under MMBA section 3505 when it made a unilateral change in its retiree medical insurance program on June 5, 2007. I also conclude that by the same conduct, the County violated section 3503 by denying employee organizations their right to represent their members and violated section 3506 by interfering with the rights of employees to be represented by their employee organization.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it has been found that the County of Sacramento (County) violated the Meyers-Milias-Brown Act (Act). The County breached its duty to meet and confer in good faith with the SEIU in violation of Government Code section 3505 and PERB Regulation 32603(c) when it unilaterally implemented changes in the Retiree Medical and Dental Insurance Program for the year 2008. By this conduct, the County also interfered with the right of County employees to participate in activities of an employee organization of their own choosing, in violation of Government Code 3506 and PERB Regulation 32603(a), and denied SEIU its right to represent

employees in their employment relations with a public agency, in violation of Government Code section 3503 and PERB Regulation 32603(b).

Pursuant to section 3509, subdivision (a) of the Government Code, it hereby is ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally implementing the June 5, 2007, changes in eligibility of employees for the Retiree Medical and Dental Program without fulfilling its obligation to bargain with SEIU.

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

3. Denying Employee Organizations their right to represent employees in their employment relations with the County.

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

1. Rescind the changes in eligibility of employees for the Retiree Medical and Dental Program made on June 5, 2007.

2. Make whole all employees affected by the June 5, 2007, changes in eligibility for lost benefits, monetary and otherwise, plus interest at the rate of 7 percent per annum.

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

Order. Such posting 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 the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on SEIU.

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

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

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

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130; see also Government Code sec. 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies

and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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

Bernard McMonigle
Administrative Law Judge