STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 721, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	Case No. LA-CE-470-M PERB Decision No. 2233-M January 23, 2012
COUNTY OF RIVERSIDE, Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 721, Respondent.	Case No. LA-CO-85-M

Appearances: Weinberg, Roger & Rosenfeld by Alan G. Crowley, Attorney, for Service Employees International Union, Local 721; The Zappia Law Firm by Edward P. Zappia and Brett M. Ehman, Attorneys, for County of Riverside.

Before McKeag, Dowdin Calvillo and Huguenin, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Riverside (County) to a proposed decision by a PERB administrative law judge (ALJ) (attached). The ALJ considered unfair practice charges cross-filed under the Meyers-Milias-Brown Act (MMBA)[1] by the County against

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

Service Employees International Union, Local 721 (SEIU)[2] and by SEIU against the County.[3] The central issue in both charges is the nature and extent of SEIU's access to the County's Regional Medical Center (RCRMC). SEIU alleged that the County prohibited SEIU from access to the union's designated bulletin boards and to non-work areas to confer with employees, and that the County's prohibitions were imposed unilaterally without notice or an opportunity to meet and confer. The County alleged that SEIU violated the bulletin board and access provisions of its Employee Relations Resolution (ERR).

The ALJ determined that both parties committed unfair practices and proposed appropriate relief. Only the County filed exceptions, which SEIU opposed.[4] The County's exceptions address only the ALJ's conclusions of law, and present for our consideration the same legal arguments made to and treated appropriately by the ALJ.[5]

The Board has reviewed the entire record in this matter. The ALJ's findings of fact are supported by the record and unchallenged by either party. We therefore adopt the ALJ's findings of fact as the findings of the Board itself except as noted expressly below. [6]

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[2] Case No. LA-CO-85-M.

[3] Case No. LA-CE-470-M.

[4] The County filed a tardy request for oral argument in this matter. SEIU also requested oral argument. 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. (*United Teachers of Los Angeles (Valadez, et al.)* (2001) PERB Decision No. 1453; *Monterey County Office of Education* (1991) PERB Decision No. 913.) Based on our review of the record, all of the above criteria are met in this case. Accordingly, the parties' respective requests for oral argument are denied.

[5] In support of its exceptions, the County resubmitted its brief filed with the ALJ.

[6] PERB Regulation 32300(c) states "[a]n exception not specifically urged shall be waived." PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

We conclude that the ALJ correctly determined violations of the MMBA, and adopt the ALJ's conclusions of law, as supplemented by our discussion below.

DISCUSSION

The ALJ's Decision and the County's Exceptions

Relying on *The Regents of the University of California, University of California at Los Angeles Medical Center* (1983) PERB Decision No. 329-H (*UCLA Medical Center*), the ALJ determined that: (1) SEIU's non-employee agents enjoy a presumptive right of access to non-work areas in the RCRMC (bulletin boards, employee lounges and break rooms) and to hallways which must be traversed by SEIU's agents to reach these non-work areas, and (2) the County failed to establish that the presence of SEIU agents in the non-work areas and the hallways disrupted medical services or disturbed patients. Thus, by insisting that SEIU agents secure prior permission for their access to these areas, the County interfered with employee and SEIU rights. Similarly, by imposing the advance permission requirement unilaterally and without affording SEIU notice and an opportunity to meet and confer, the County unlawfully changed its access rule.

The County excepts to these conclusions, urging again as it did to the ALJ, that *UCLA Medical Center* is inapposite, arising under the Higher Education Employer Employee Relations Act (HEERA)[7], and thus reflects a different legislative policy design for non-employee union agent access than does the MMBA.

The ALJ determined that SEIU violated the County's ERR when SEIU's non-employee agents entered RCRMC work areas for the purpose of speaking with employees and to access non-union bulletin boards without making advance arrangement as the ERR required, thereby

[7] HEERA is codified at Government Code section 3560 et seq.

violating MMBA section 3509(b). The ALJ also determined that other alleged misconduct by SEIU's non-employee agents (twice attempting unsuccessfully to post union material on non-union bulletin boards) did not amount to a violation of the ERR. The County excepts as well to this latter conclusion.

MMBA Access Standards

The ALJ determined that under MMBA unions enjoy a presumptive right of access to non-work areas subject to reasonable regulation by an employer.[8] We concur.

MMBA contains a specific provision for access of employee organization officers and representatives to employee work locations. (Gov. Code § 3507(a)(6).) Enacted in 1961 as section 3507(c) of the George Brown Act, and reenacted in 1968 as MMBA section 3507(d), this provision facilitates employee organization access to the work place as a means of promoting the right of employee representation established in Section 3502.[9]

We construe MMBA to afford employee organization officers and representatives a presumptive right of access. By so doing we adopt an interpretation consistent with our other statutes,[10] and in accordance with both MMBA's express access provision and its purpose of

[8] The ALJ relied on cases cited in *City of Porterville* (2007) PERB Decision No. 1905-M (*Porterville*) at pp. 7-8. In *Porterville*, the Board reversed the ALJ's conclusion that the city had violated the union's MMBA access rights. Thus, while *Porterville* recites cases confirming union access rights under Educational Employment Relations Act (EERA), Ralph C. Dills Act (Dills Act) (previously State Employer-Employee Relations Act or SEERA) and HEERA, *Porterville* is not clear precedent holding that the MMBA affords to unions access rights equivalent to those under EERA, Dills Act and HEERA. Thus, we do not rely here on *Porterville* for that proposition. (EERA is codified at Government Code section 3540 et seq. Dills Act is codified at Government Code section 3512 et seq.)

[9] *Regents of the University of California, Lawrence Livermore National Laboratory* (1982) PERB Decision No. 212-H (*Lawrence Livermore National Laboratory*), Proposed Decision, p. 52; 45 Ops.Cal.Atty.Gen. 74 (1965).

[10] *State of California (California Department of Corrections)* (1980) PERB Decision No. 127-S (*Corrections*); *Richmond Unified School District/Simi Valley Unified School*

improving employer-employee relations by facilitating communication between employees, through their organization, and their public agency employer. Our prior MMBA access decisions are in accord.

In *Omnitrans* (2009) PERB Decision No. 2030-M (*Omnitrans*), after reviewing access provisions of EERA, HEERA, the Dills Act and the National Labor Relations Act (NLRA),[11] the Board stated:

> Like the other PERB-administered statutes and the NLRA, the MMBA prohibits interference with, or discrimination based on, a public employee's exercise of rights under the Act. (Gov. Code, § 3506; Cal. Code Regs., tit. 8, § 32603, subd. (a).) Thus, the above authority weighs strongly in favor of recognizing an implied right of access under the MMBA. Additionally, a provision of the MMBA that has no parallel in either the Dills Act or the NLRA provides further support for recognizing a right of access. Section 3507, subdivision (a), of the MMBA provides in relevant part that:
>
> > A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this chapter. The rules and regulations may include provisions for all of the following:
> >
> > (6) Access of employee organization officers and representatives to work locations.
>
> The above language contemplates a right of access that is subject to reasonable regulation much like the statutory access right under EERA and HEERA. Considering the language of the MMBA in light of the well-established implied right of access grounded in the non-interference and non-discrimination provisions of other labor relations statutes, we hold that the MMBA grants a recognized employee organization a right of access to a public agency's

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District (1979) PERB Decision No. 99; *Long Beach Unified School District* (1980) PERB Decision No. 130; *Marin Community College District* (1980) PERB Decision No. 145; *Lawrence Livermore National Laboratory.*

[11] NLRA is codified at 29 U.S.C. section 151 et seq.

> facilities for the purpose of communicating with employees subject to reasonable regulation by the public agency.

(Omnitrans at p. 16.)

In *Omnitrans* the access rights at issue were those of Omnitrans' employees. We then expressly reserved to future consideration access rights under MMBA of non-employee representatives of an employee organization. (Omnitrans at p. 17, fn. 11.)

Thereafter, in *Salinas Valley Memorial Healthcare System* (2010) PERB Order No. Ad-387-M (*Salinas Valley*), we approved the following portion of the board agent's administrative ruling on election objections:

> The MMBA grants employee organizations a right of access, subject to reasonable regulation. *(Omnitrans* (2009) PERB Decision No. 2030-M.) The MMBA provides that public agencies may adopt reasonable rules and regulations for, among other things, access of organization officers and representatives to work locations. [Footnote omitted.] Employee organizations are generally entitled to reasonable access to employees during employees' non-working time, including before and after work and during breaks and lunches, subject to advance notice to the employer and provided that such access does not impede employees' performance of duties. (*California Department of Transportation* (1981) PERB Decision No. 159b-S; *Marin Community College District* (1980) PERB Decision No. 145; *Long Beach Unified School District* (1980) PERB Decision No. 130; *California Department of Corrections* (1980) PERB Decision No. 127-S.)
>
> Access to employee work locations is subject to reasonable restrictions, particularly in the hospital setting, where considerations of patient care, privacy and security have primacy. (*Regents of the University of California* (2004) PERB Decision No. 1700-H; *UCLA Medical Center* (1983) PERB Decision No. 329-H.)

(Salinas Valley at p. 22.)

Here, we reach the question left unanswered in *Omnitrans* and addressed indirectly in *Salinas Valley*, namely, the MMBA access rights of non-employee agents of a union.

The County urges us to read MMBA as the National Labor Relations Board (NLRB) and the courts read the NLRA, to wit, approving employer restrictions on non-employee access absent proof by the union that alternative communication channels are insufficient or that the employer's restrictions discriminate against the union. (*NLRB v. Babcock & Wilcox Co.* (1956) 351 U.S. 105.) We long ago considered and rejected this regime, noting: (1) absence in the NLRA of express language regarding union access, and (2) the inherent and substantial distinction between the property interest of the private employer which drives access policy under the NLRA and the public nature of facilities operated in the public interest by employers subject to our statutes.[12]

Our statutes contain express reference to access rights and express a common legislative purpose to promote communications and improve employer-employee relations between public employers and their employees through recognition of the employees' right to join and be represented by employee organizations.[13] We therefore have formulated a presumptive right of access to California's public facilities by union agents, subject to reasonable regulation upon the employer's showing that a particular regulation is: (1) necessary to the efficient operation of the employer's business and/or the safety of its employees and others; and (2) narrowly drawn to avoid overbroad, unnecessary interference with the exercise of statutory rights.[14]

We apply this right of access without distinction both to employee and non-employee union representatives. We conclude that by expressly placing in the MMBA the provision for

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[12] *Corrections* at pp. 6-8; *Lawrence Livermore National Laboratory*, Proposed Decision at pp. 53-55; *UCLA Medical Center* at pp. 7-8, Proposed Decision at p. 38.

[13] Government Code sections 3500(a), 3512, 3540, 3560(e); *Lawrence Livermore National Laboratory*, Proposed Decision at pp. 51-53.

[14] *Lawrence Livermore National Laboratory* at pp. 13-15, Proposed Decision at pp. 51-53; *UCLA Medical Center* at pp. 4-6, Proposed Decision at pp. 37-38.

organizational access, the Legislature intended to and did assure employees the right to confer with non-employee organizational representatives at their work locations, subject only to reasonable regulation. This construction harmonizes MMBA with our other statutes providing expressly for access by employee organization officers and representatives to employee work locations. Had the Legislature intended to rely solely on the implied and limited right of access found by the NLRB in the NLRA, it could have omitted (or removed) any express access provision from the MMBA. It did not do so.

In sum, we construe the MMBA to afford employee and non-employee representatives of employee organizations alike, access to areas in which employees work. This access is subject to reasonable employer regulation upon the employer's showing that a particular regulation is both necessary to the efficient operation of the employer's business and/or the safety of its employees and others, and narrowly drawn to avoid overbroad, unnecessary interference with the exercise of statutory rights.

Application of these standards will depend on the circumstances of each case. In general, however, non-employee representatives of employee organizations enjoy access to non-work areas, and may solicit for union membership or activity, or distribute literature to, employees in such areas on the employees' non-work time. Employer restrictions, if any, must be reasonable, that is, both necessary to the employer's efficient operations and/or safety of employees or others, and narrowly drawn to avoid unnecessary interference. For example, we have found reasonable an employer's rule requiring that a union representative identify himself upon arrival. (*San Ramon Valley Unified School District* (1982) PERB Decision No. 230.) But a rule requiring a union representative to secure advance permission to meet with employees on their non-work time in non-work areas was overbroad and unreasonable. (*Ibid.*)

Access in Public Hospitals

We apply these access rules to public hospitals operating under our statutes, but with adjustments taking into consideration the sensitive work there performed. (*Salinas Valley; UCLA Medical Center.*) A public hospital may limit solicitation and distribution activities by non-employee organization representatives to the employees' non-working time in non-working areas, and the employer bears the burden of proof that its restrictions on access are reasonable. A public hospital may limit access by non-employee representatives of employee organizations in immediate patient care areas as necessary to prevent disruption of patient care or disturbance of patients,[15] and the employee organization bears the burden of proof that such restrictions are unreasonable. (*UCLA Medical Center.*) Where a hospital uses its public passageways (walkways, corridors, elevators and the like) both for patient care and for access to non-work areas or designated organizational access areas such as bulletin boards, the hospital must permit non-employee representatives to traverse the public passageways in order to access the non-work areas and other designated access areas, and the employer bears the burden of proof that its restrictions as to these passageways are reasonable. (*UCLA Medical Center.*) The availability of alternative non-work venues (cafeterias, classrooms, and the like) within or near the hospital in which non-employee representatives of organizations may meet employees on their non-work time, may be considered in assessing the reasonableness of the employer's limitations on non-employee access to more traditional non-work venues (break rooms, locker rooms and the like).

[15] Disturbance of patients includes but is not limited to disclosure of patient medical information beyond that incidental disclosure countenanced under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The record below and ALJ's decision reflect an appropriate balance between medical information confidentiality and access by non-employee agents of SEIU. (ALJ's Proposed Decision at pp. 18, 26.)

The employer bears the burden of proof that such alternative venues are a reasonable substitute for more traditional venues. (*UCLA Medical Center.*)

We turn now to the particular issues in this case. Since SEIU filed no exceptions, we limit our discussion to the County's exceptions to the ALJ's decision, and only the particular access ordered by the ALJ is at issue herein. (*UCLA Medical Center.*)

Access to Designated Organizational Bulletin Boards.

The ALJ determined that the County prevented SEIU's non-employee agents from traversing some work areas and some patient care areas in order to post and update SEIU materials on union bulletin boards designated for SEIU use under the County's ERR. In so doing, the County acted contrary to the County's MOU with SEIU,[16] in violation of SEIU's MMBA access rights, and without reasonable justification for this access restriction. It thereby enforced its ERR section 18 bulletin board provisions in contradiction of MMBA section 3507, and by the same conduct violated Sections 3506 and 3503, and committed unfair practices under Section 3509(b). The County excepts to these conclusions.

We concur with the ALJ. To post and update (i.e., "maintain") materials on the organizational bulletin boards designated in the County's ERR, non-employee agents of SEIU were obliged to traverse public passageways used by the hospital both for patient care and for

[16] The "maintenance in a timely fashion" of organizational bulletin board postings was a duty imposed on SEIU under section 1 of SEIU's memorandum of understanding (MOU) with the County, as well as by a memorandum of agreement between the County and SEIU. Access to the bulletin boards was thus necessary in order for SEIU to meet its contractual undertakings. We note that in discussion of this violation at page 22 of the proposed decision the ALJ referred to MMBA section 3507(a) and our decision in *UCLA Medical Center* as though we were construing MMBA in that decision. However, *UCLA Medical Center* arose and was decided under HEERA. Nonetheless, this apparent mistake is of little moment, since we construe both statutes to afford the same access rights to non-employee representatives of employee organizations.

access to employee work and non-work areas. The County excluded SEIU's non-employee agents altogether from such passageways.[17] The ALJ ruled that in so doing the County improperly denied SEIU access to SEIU's designated bulletin boards.

We conclude, with the ALJ, that a public hospital may establish reasonable restrictions limiting access by the public, including non-employee representatives of employee organizations, to immediate patient care areas. However, it may not deny non-employee representatives of employee organizations access to designated organizational bulletin boards. Such representatives may traverse passageways also used for patient care if necessary to access organizational bulletin boards and to access non-work areas to confer with employees. The employer may prohibit employees from conferring in such passageways with non-employee representatives of employee organizations, and may prohibit non-employee representatives from lingering or stationing themselves in passageways also used for patient care to the extent such activity would disrupt patient care or disturb patients.[18] And, if an employer permits the public access to such passageways, it may not deny access to non-employee representatives of employee organizations. (*UCLA Medical Center*.)

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[17] We note that the ALJ determined not to consider the content of complaints reportedly made to Human Resources Manager Berninia Bradley (Bradley) by several members of her staff regarding conduct of SEIU agents. Bradley herself received these complaints by phone and was not a percipient witness to the reported conduct. The County did not present percipient witness testimony about the conduct of the SEIU agents in these several instances. The ALJ determined Bradley's testimony as to these particular events was hearsay, offered for the truth of the matter, i.e., the conduct of the SEIU agents. The testimony is not hearsay if offered only to establish that the supervisors did in fact call Bradley, what she heard them say, and her state of mind upon hearing their reports. Regardless, testimony of the percipient supervisors making the telephonic reports to Bradley would have been more persuasive testimony. The ALJ reasonably deemed the record evidence insufficient to make a finding about the alleged conduct of the SEIU agents.

[18] See footnote 15 *infra*.

Advance Arrangements

The ALJ determined that the County ejected SEIU representatives from non-work locations, allegedly for failing to arrange in advance for access.[19] In so doing, the County acted contrary to its ERR and its MOU with SEIU, in violation of SEIU's MMBA access rights, and without reasonable justification for this access restriction. In so doing, the County enforced its ERR section 20 in contradiction to MMBA section 3507, and by the same conduct violated Sections 3506 and 3503, and committed unfair practices under Section 3509(b). The County excepts to these conclusions.

The County's ERR section 20, provided for employee organization access to employees in employee work areas on the condition that the employee organization made advance arrangements. On its face, this rule is reasonable. The County, however, deemed the entire hospital a work area, and on that basis demanded advance arrangement for non-employee representatives of SEIU to access any area, including traditional non-work areas such as employee break rooms, locker rooms and the grounds adjacent to employee entrances to hospital buildings. We conclude, with the ALJ, that the County may not reasonably characterize the entire hospital as a work area. We conclude, with the ALJ, that break rooms, locker rooms and adjacent grounds were non-work areas, and that ejection of non-employee representatives of SEIU from these traditional non-work areas for failure to make advance arrangement was not justified by ERR section 20, or by legitimate concerns for the hospital's operation. Such ejection

[19] In her testimony, the County's human resources manager stated that she advised supervisors calling her to report presence of SEIU non-employee agents to send the SEIU agents to the cafeteria if they were being disruptive, leaving it up to the discretion of each supervisor to decide whether work was being disrupted and thus whether to demand that the SEIU agent proceed to the cafeteria. The ALJ's summary of Bradley's testimony at page 10 of the proposed decision omitted the underscored language. We conclude this omission, while meriting mention, does not detract from the ALJ's findings.

amounted to unnecessary and overbroad construction of the ERR and improperly denied SEIU non-employee agents access to non-work areas.

The ALJ also determined that in four instances, non-employee agents of SEIU did access work locations[20] without making the required advance arrangement, thereby violating the County's advance arrangement access rule, and that such violation constituted an unfair labor practice. SEIU did not except to this conclusion.

We conclude, with the ALJ, that a public hospital's rule limiting access by non-employee representatives of employee organizations must be reasonable, narrowly drawn, and consistently enforced.[21] Although the County failed to establish that application of its advance arrangement rule to the entire hospital was reasonable and narrowly drawn, it did establish that as to work areas, the rule was reasonable. SEIU failed to demonstrate that application of the advance notice rule to the work areas unreasonably interfered with access of its non-employee agents to employees on their non-work time in non-work areas.

Unilateral Change in Access Policy

The ALJ determined that: (1) without meeting and conferring with SEIU, the County imposed the access restrictions described above; (2) the restrictions changed unilaterally the policies stated in ERR sections 18 and 20; and (3) the changes have had a generalized effect and continuing impact limiting unit employee access to SEIU representatives and information in SEIU flyers. Thus, determined the ALJ, the County violated MMBA section 3505. The County excepts to these conclusions.

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[20] Proposed Decision at p. 26.

[21] We stress consistency since it appears here that the County, hospital staff and SEIU's non-employee representatives differed markedly in their expectations about access.

We concur with the ALJ. We note that *West Side Healthcare District* (2010) PERB Decision No. 2144-M, articulates a more recent formulation of our test for unilateral change than do the decisions cited and relied on by the ALJ. Relying on our more recent decision, we concur with the ALJ's conclusion that the County unilaterally changed policies stated in ERR sections 18 and 20, and that these changes violated MMBA section 3505.

SEIU's Posting Flyers on Non-Union Bulletin Boards

The ALJ determined that in accessing the non-union bulletin boards in employee work areas without advance arrangement, SEIU non-employee agents did violate the advance notice access rule in ERR section 20. SEIU did not except to this conclusion.

The ALJ also determined that SEIU did not intentionally misuse its ERR and MOU bulletin board rights when its non-employee representatives twice mistakenly posted SEIU flyers on non-union bulletin boards. In each case, the SEIU material was quickly removed and the SEIU representatives escorted to the appropriate SEIU bulletin boards. The County excepts to this conclusion.

We conclude, with the ALJ, that by entering an employee work area twice without advance arrangement and posting material on bulletin boards not designated for SEIU materials, SEIU non-employee agents did transgress the hospital's advance arrangement rule. However, since the SEIU materials posted inappropriately promptly were removed and hospital staff promptly re-directed the SEIU agents to appropriate union bulletin boards, we conclude, with the ALJ, that the two bulletin board posting incidents were themselves inadvertent and de minimis, and did not amount to a MMBA violation.

To summarize, except as expressly noted herein, we affirm the ALJ's findings of fact and conclusions of law.

ORDER

Based on the findings of fact and conclusions of law and the entire record in this matter, the Public Employment Relations Board (PERB or Board) finds in Case No. LA-CE-470-M that the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. The County violated MMBA section 3507 by enforcing its Employment Relations Resolution (ERR) to prohibit access by representatives of Service Employees International Union, Local 721 (SEIU) to its designated bulletin boards at the Riverside County Regional Medical Center (RCRMC) and to RCRMC employees on non-work time in non-work areas. The County also violated MMBA section 3505 by unilaterally changing the policies set forth in ERR without giving SEIU prior notice or opportunity to bargain. By the same conduct, the County also interfered with the rights of employees in violation of MMBA section 3506 and deprived SEIU of its right to represent employees in violation of Section 3503. By all of this conduct, the County committed unfair practices under MMBA section 3509(b).

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

A. CEASE AND DESIST FROM:

1. Prohibiting SEIU access to its designated bulletin boards;

2. Prohibiting SEIU access to non-work areas for the purpose of speaking with small numbers of employees on non-work time;

3. Making unilateral changes in union access policies without providing SEIU with prior notice or opportunity to bargain regarding such changes.

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

1. Allow SEIU access to its designated bulletin boards, notwithstanding that such access may involve traversing hallways, work areas, and patient care areas;

2. Allow SEIU access to non-work areas to speak with small numbers of employees on non-work time without requiring advance arrangement;

3. Provide SEIU with notice and opportunity to bargain prior to making any changes in access policies;

4. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees of RCRMC 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 it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

5. 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.

The Board also finds in Case No. LA-CO-85-M that SEIU violated ERR section 20 by allowing its agents to access RCRMC work areas for the purpose of speaking with employees without making advance arrangement, in violation of MMBA section 3509(b).

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

A. CEASE AND DESIST FROM:

1. Allowing its agents to access RCRMC work areas for the purpose of speaking with employees without making advance arrangements with the County as required by ERR section 20.

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

1. Conform to the advance arrangements required by ERR section 20 prior to sending any agent to speak with employees in work areas of the RCRMC.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees of the RCRMC 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 it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

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. SEIU 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 County.

Members McKeag and Dowdin Cavillo 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-470-M, *Service Employees International Union, Local 721 v. County of Riverside*, in which all parties had the right to participate, it has been found that the County of Riverside violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. by enforcing local rules regarding union access in contradiction to the MMBA and by unilaterally changing its union access policies without providing Service Employees International Union, Local 721 (SEIU) prior notice or opportunity to bargain.

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

A. CEASE AND DESIST FROM:

1. Prohibiting SEIU access to its designated bulletin boards;

2. Prohibiting SEIU access to non–work areas for the purpose of speaking with small numbers of employees on non-work time;

3. Making unilateral changes in union access policies without providing SEIU with prior notice or opportunity to bargain regarding such changes.

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

1. Allow SEIU access to its designated bulletin boards, notwithstanding that such access may involve traversing hallways, work areas, and patient care areas;

2. Allow SEIU access to non-work areas to speak with small numbers of employees on non-work time without requiring advance arrangement;

3. Provide SEIU with notice and opportunity to bargain prior to making any changes in our access policies.

Dated: _____ COUNTY 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.

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-85-M, *County of Riverside v. Service Employees International Union, Local 721*, in which all parties had the right to participate, it has been found that Service Employees International Union, Local 721 (SEIU) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. by allowing its agents to access work areas of the Riverside County Regional Medical Center (RCRMC) without making advance arrangements with the County of Riverside (County), as required by Employee Relations Resolution (ERR) section 20.

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

A. CEASE AND DESIST FROM:

1. Allowing SEIU agents to access RCRMC work areas for the purpose of speaking with employees without making advance arrangements with the County as required by ERR section 20.

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

1. Conform to the advance arrangements required by ERR section 20 prior to sending any agent to speak with employees in work areas of the RCRMC.

Dated: _____

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 721

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 721, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-470-M PROPOSED DECISION (August 3, 2009)
COUNTY OF RIVERSIDE, Charging Party, v. SEIU LOCAL 721, Respondent.	UNFAIR PRACTICE CASE NO. LA-CO-85-M

Appearances: Weinberg, Roger & Rosenfeld by Alan G. Crowley, Attorney, for SEIU Local 721; The Zappia Law Firm by Edward P. Zappia, Attorney, for County of Riverside.

Before Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

On July 14, 2008, SEIU Local 721 (SEIU) filed an unfair practice charge against the County of Riverside (County) in Case No. LA-CE-470-M, claiming that the County unlawfully applied its Employee Relations Resolution (ERR) to prohibit SEIU from access to areas at its Riverside County Regional Medical Center (RCRMC) where SEIU bulletin boards (BBs) are located, and from access to non-work areas of the RCRMC. SEIU also alleged that the County unilaterally changed its policies on access to BBs and to non-patient-care areas during non-working time, without giving SEIU prior notice or opportunity to bargain. On September 25, 2008, the office of General Counsel of the Public Employment Relations Board (PERB or

Board) issued a complaint alleging that by this conduct, the County violated the Meyers-Milias-Brown Act (MMBA or Act) sections 3505 and 3507, and by the same conduct violated sections 3503 and 3506, thereby committing unfair practices under section 3509(b).[1] In its answer to the complaint, the County denied all wrongdoing and claimed, as affirmative defenses, that the Union sought unlawful access and violated lawful patient care policies.

On September 9, 2008, the County filed an unfair practice charge against SEIU in Case No. LA-CO-85-M, claiming that SEIU violated the BB and access rules of the ERR. On September 26, 2008, the office of General Counsel of PERB issued a complaint alleging that by this conduct, SEIU committed an unfair practice under section 3509(b). In its answer to the complaint, SEIU denied all wrongdoing and claimed, as affirmative defenses, that the ERR is unlawful and that the County unlawfully applied it.

An informal settlement conference was held on October 30, 2008, in the Los Angeles office of PERB, but the matter was not resolved. Formal hearing was held before the

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[1] The MMBA is codified at Government Code section 3500 et seq. Section 3505 requires that "[t]he governing body of a public agency . . . meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations. . . ."

Section 3507(a) provides that "[a] public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization . . . for the administration of employer-employee relations under this chapter," including provisions for "(6) Access of employee organization officers and representatives to work locations," and "(7) Use of official bulletin boards and other means of communication by employee organizations."

Section 3503 guarantees to employee organizations the right to represent their members in their employment relations with public agencies.

Section 3506 states that "[P]ublic agencies . . . shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights. . . ."

And section 3509(b) makes a violation of any of the above sections, as well as a violation of any lawful employer rule or regulation, an unfair practice.

undersigned on these consolidated cases on April 7, 8, and 9, 2009. After the submission of post-hearing briefs, the matter was submitted for decision on July 9, 2009.

FINDINGS OF FACT

The County is a public agency within the meaning of MMBA section 3501(c). The RCRMC is a public hospital and medical center occupying a five-story building in El Monte, California, operated by the County. SEIU is a recognized employee organization within the meaning of MMBA section 3501(b). It represents over 6,000 employees of the County in four bargaining units, one of which is Registered Nurses (RNs) working at RCRMC.

I. Governing documents

Three documents, in effect at all material times, provide the framework for the issues herein. (1) The County's ERR, adopted in consultation with SEIU:

> Section 18. USE OF BULLETIN BOARDS. Space may be made available to registered employee organizations on department bulletin boards within the representation unit provided such use is reasonable and does not interfere with the needs of the department. Notices shall be dated and signed by the employee organization or its representative responsible for their issuance. The privilege does not extend to individual members of an organization.
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> Section 19. USE OF MEETING PLACES. Employee organizations shall be granted the use of County facilities for meetings composed of County employees, provided such meetings are held outside regularly scheduled working hours for the group which is meeting and provided space can be made available without interfering with County needs. Employee organizations desiring to use County facilities for such meetings shall obtain the permission of the appropriate County officials before using such facilities. Meeting places shall be left in an orderly manner upon completion of the meeting.
>
> Section 20. ACCESS TO WORK AREA. Representatives of qualified employee organizations may be allowed access to work locations when necessary to represent an employee on a grievance or to communicate briefly with an employee on matters within the scope of representation, provided that advance

> arrangement including disclosure of the purpose is made with the department head or supervisor in charge of the work area, and that the visit does not unreasonably interfere with County business nor use an excessive amount of time.

(2) The parties' Memorandum of Understanding (MOU), Article XXXI, Union Rights:

> Section 1. Bulletin Boards: Space will be made available to SEIU on a reasonable number of departmental bulletin boards designated for such purpose, provided such use is reasonable. Notices shall be dated and signed by a SEIU representative. The privilege does not extend to the individual members of SEIU. The posting and removal of bulletin board material must be maintained in a timely fashion. The County, through the Human Resources Director, or designee, reserves the right to suspend or cancel bulletin board privileges for abuse.
>
> Section 4. Worksite Access: The Union will maintain its existing right to enforce their rights to worksite access.
>
> The Union shall also be provided, upon request, a meeting room at all work locations, to conduct meetings with represented employees before and after work and during lunch periods (non-working time). Where facilities like RCRMC exist and make impracticable the ability of employees on other floors to be able to attend a meeting due to limited lunch breaks, the County agrees to make every effort to provide additional meeting rooms to address this issue. All meetings will be scheduled through Human Resources, and, at the time the request is made the request will be granted, provided that the meeting room requested has not been previously scheduled.

(3) A memorandum dated October 5, 2005, from RCRMC management to the nursing department. This memorandum was the result of a "walk-thru" the RCRMC conducted by Human Resources Director Tom Prescott (Prescott), accompanied by SEIU Shop Steward Marward Sullivan-Taylor (Sullivan-Taylor) and SEIU Executive Director Rebecca Miller, to locate and identify the BBs:

> After much discussion, the SEIU/RCRMC Labor Management Meeting reached agreement on the following placement of SEIU bulletin boards:

- Outside the cafeteria
- Between the staff elevators on each floor
- In the following locker rooms
    - Emergency Department F1052
    - PCU C2088
    - Operating Room F2041, F2038, F0113 and F0115
    - ACCU D2021
    - NICU/L&D F3052
    - 3A A3088
    - 3C C3088
    - OB/NB E3017
    - 4C C4088 [2]
- In the break rooms of the following areas
    - Clinical Lab
    - Diagnostic Imaging
    - Respiratory Care
    - Pharmacy
    - IT
    - Clinics
    - Physical and Occupational Therapy/Rehabilitative Services

Bulletin boards shall not be used for personal reasons. Notices shall be dated and signed by a SEIU Local 1997 [Local 721's predecessor] representative. The County reserves the right to suspend or cancel bulletin board privileges for qualifying abuse, inclusive of profanity, inappropriate pictures, personal comments or lewd remarks. Memos, letters or fliers that contain a strong communication against the County or management are not considered a qualifying abuse for which privileges may be suspended.[3]

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[2] The various units are designated as follows: PCU - Progressive Care Unit; ACCU - Adult Critical Care Unit; NICU - Neonatal Intensive Care Unit; L&D - Labor & Delivery; 3A, 3C, 4C – General Surgery; OB/NB - Obstetrics.

[3] The County also maintains locked BBs near the staff elevator banks on each floor, where employees could post notices of parties, showers, etc. SEIU also used these BBs from time to time to post general meeting announcements; agents were able to obtain keys from management, and when the keylocks were changed to keypads, they were given the security codes.

II. RCRMC Layout

A description of the hospital layout is necessary for an understanding of the issues.

Lower level/Fourth floor

The lower level houses the Clinical Laboratory, Mail Services, Transportation, Plant Operations, Environmental Services, Information Services, and Materials Management. Although BBs are located here, patients are not treated on this level, and it is not in contention. Nor is the fourth floor, which contains the psychiatric "lock-down" unit.

First floor

The main public entrance to the hospital is located at the south end of this floor. To the immediate right is the Infusion Center, bordered by a public walkway. To the north of the public entrance is a Medical Mall, beyond which are medical offices, Physical Therapy, Occupational Therapy, Diagnostic Services, and the pharmacy; this entire area is bordered by a public walkway. To the north of this area is the cafeteria. To the east of the main entrance are the Emergency Room (ER) and Diagnostic Imaging, bordered together by a public walkway.

Second floor

This floor houses the Progressive Care Unit (PCU), Adult Critical Care Unit, Same-Day Surgery, Respiratory Therapy, Operating Room (OR), Family Medical Department, and Administration. Each of these units, except for the OR, is bordered by a public walkway. To reach the PCU, you must use a buzzer to open the door, which is done by visiting families as well as SEIU.

Third floor

This floor contains the Surgical Acute Unit, Pediatrics Critical Care Unit, Surgical Specialties and Obstetric Acute Unit. Each of these units is bordered by a public walkway.

Dr. Arnold Tabuenca (Dr. Tabuenca), a County physician/surgeon, testified to the various hospital areas. He explained that RCRMC is a "trauma center," i.e., when there are serious injuries due to, e.g., a traffic accident, emergency vehicles will take patients to RCRMC rather than to a hospital which may be closer but not equipped or trained for trauma treatment. There is no special access required to go through the public entrance to the ER. However, the ER sees over 90,000 patients per year, and therefore must use the hallways where, on a triage basis, the least critical patients often sit and wait for treatment. Trauma carts, blood pressure monitors, x-ray machines and other instruments are often in this hallway area. Beyond the public hallway is an inside door leading to treatment rooms. In this treatment-rooms area, physicians and RNs walk in and out of the rooms to get medications from the nurses' station and to go from one patient to another, and technicians are moving equipment from room to room. Families can be in this area for a short time, or they can wait in the patient's room, the outer waiting room, or near the elevators.

Dr. Tabuenca testified that the Medical Mall is open to the public. Other areas, including the ACCU, OR, Pediatrics, and Labor & Delivery, have locked doors which require key cards or intercom permission to access. As to hospital hallways, Dr. Tabuenca explained that visitors, custodial workers, and food service employees, inter alia, use the hallways, as do medical staff on break. But even while on duty, an RN could give someone a brief greeting in a hallway, tell them where the restrooms are located, etc. He explained that the union must traverse the hallways, including those adjacent to patient rooms, to get to the break rooms or locker rooms where its BBs are located, and they would not disrupt patient care or on-duty staff if they did not engage them in conversation. He also acknowledged that there is no patient care in the break rooms or locker rooms, and that the union would not disturb staff or patient care by posting flyers there, although he opined that it would be better if the union

notified the nurses' station in advance of its visits. Further, according to Kim Baumgarten (Baumgarten), assistant director of nursing, HIPAA,[4] which protects against the disclosure of confidential patient information, contains an exception to patient information casually overheard in public-access hallways.

III. Access and bulletin boards

Historically, SEIU agents had easy access to the designated BBs in employee break rooms and locker rooms located throughout the RCRMC, as well as to the staff BBs near the elevator banks, and could briefly speak with off-duty unit members without giving the hospital advance notice. To reach many of the BBs, agents must traverse walkways also used by visitors, patients, patients' families, medical providers, and other hospital employees.

Shop Steward Sullivan-Taylor testified without contradiction that between October 2005 and her retirement in October 2007, she frequently posted current materials on the BBs. In doing this, she often spoke briefly with unit employees during break times in break rooms or locker rooms about the flyers or about their workplace concerns, and was never asked to leave. She was joined in these activities by SEIU Representatives Tanya Arnaiz (Arnaiz), Judy Hermasillo, and later Gregorio Daniels (Daniels), whom she introduced to the charge nurses and nurse managers of the various departments, and all of whom she claimed also had easy access. After her retirement from the County, she continued these activities in the employ of SEIU.

Daniels also testified. He has been with SEIU since January 2006 and was assigned to RCRMC from March until September 2008. He worked there with Arnaiz and Sullivan-Taylor, distributing SEIU literature in the break rooms and locker rooms, which usually took

[4] Health Insurance Portability and Accountability Act of 1996.

him about two hours per visit. He might also have brief conversations with off-duty unit members during these walk-throughs, but if someone wanted to have a longer conversation, he would arrange to meet in the cafeteria. If he wanted to hold a formal membership meeting, he would make arrangements with the County's Human Resources Department. Daniels testified that in the first few months had no access problems.

Gualdalupe Palma, SEIU's assistant director for internal organizing, testified that in early 2007, SEIU changed its organizing methods, from having its business agents just wait for members to call when they had a problem at work, to actively visiting the jobsites to talk with unit employees, "get to know them more, get to understand what their issues are and how they would like to see their union not only represent them but . . . for the union to truly be their organization." The ultimate goal was to have unit members run their own meetings and resolve some of their own problems, as well as to organize new members.

In early 2007 SEIU embarked on an organizing campaign to represent the County's several thousand temporary workers (TAP) employed at various County locations including the RCRMC. The campaign culminated in SEIU's request for card-check recognition in March 2008, which the County denied. Various litigation actions were initiated by both parties, including an unfair practice charge filed by SEIU in Case No. LA-CE-413-M, which is currently pending. In the spring of 2008,[5] SEIU began another organizing campaign to represent the County's per diem workers employed at various County locations, including the RCRMC.[6] Around that time SEIU was also trying to fend off an effort by California Nurses' Association (CNA) to represent its registered nurses (RNs). For those purposes, SEIU sent

[5] All dates refer to the year 2008 unless otherwise specified.

[6] Case No. LA-CE-497-M, regarding the County's denial of SEIU's per diem petition, is also pending.

into the RCRMC more than its usual complement of agents—some like Sullivan-Taylor, Arnaiz, and Daniels to interface with the already-represented unit employees, and some to gather support among the temporary and per diem employees. There is no dispute that SEIU did not call ahead to notify the County or seek permission to visit the RCRMC.[7]

County evidence

Human Resources Manager Berninia Bradley (Bradley) testified that in April/May she began receiving several complaints, from employees and supervisors in all hospital departments, that SEIU agents were talking to staff while they were working; Bradley herself did not witness any such incident. Bradley would tell the caller to send the SEIU agents to the cafeteria; if a supervisor called often, she left it up to the supervisor's discretion to determine whether work was being disrupted and to take appropriate action. She did not issue a written directive.

County witnesses testified to the following incidents: Kim Baumgarten, assistant director of nursing for the past six months and before that, nurse manager in ER, testified to three incidents in the relevant time period: (1) Employees told her that an SEIU representative was disturbing ER staff by talking to them during work time. She went to find out for herself, and saw an unidentified man standing in the outer hallway near the break room; he did not have any flyers with him. She passed him several times over a one-hour period, at first thinking he was with a patient but then realizing he was with SEIU.[8] She did not see him speak with any employee, but relying on employee reports, she told him to leave. He said he had a right to be there. She then escorted him to Administration, and does not know where he

[7] SEIU did, however, submit written requests several weeks in advance to hold general membership meetings at County facilities, including the RCRMC.

[8] By description, this was SEIU organizer Ramon Martinez.

went after that. Baumgarten contended that the hallway is a patient care area because patients are sometimes holding there, giving personal information to staff. (2) One evening as she was exiting the employee door (near the ambulance/helipad entrance) she saw SEIU agents talking to employees going in and out. She told the agents it was not the place to talk to employees, as they were working. However, she also explained that work begins and ends when one nurse "hands off" her assignment to another nurse; this obviously occurs inside the building. (3) On one occasion she saw an SEIU agent covering some staff announcements posted on the staff Educational BB in the ER break room, by tacking union posters over them. This is not a designated union BB. Baumgarten told the agent to take the posters down, then escorted her to the locker room where the SEIU BB was located.

Louise O'Rourke (O'Rourke), nurse manager, testified to three incidents during the relevant time period: (1) In the pre-op holding room of the OR area she saw an SEIU agent, among several other people. She did not describe what he was doing. She told him to go to the cafeteria; he argued with her, and she then escorted him to the elevator. She claims that area is open to patients, physicians, RNs, family members, police officers and prisoners, that patients may be giving confidential medical information to medical staff, and may be in various states of undress. She did not say that any patients were in the area at that time. (2) On one occasion she saw two SEIU agents in Same-Day Surgery, standing 5-10 feet from the door to the break room trying to speak with RNs. She did not say whether the RNs were on duty, were providing patient care, or were even talking to the SEIU agents. She told the agents to go to the cafeteria; they argued, but left the area. She described two doors to this area, one where patients enter with their families, and another where patients are wheeled out for surgery; the break room is between these two doors. There are also dressing rooms in this area where patients undress for surgery; she did not say whether any patients were in the area at that

time. (3) On one occasion she saw Daniels in the GI Lab area talking to RNs near the staff elevator. She told him to leave; at first he refused, then he left. She claimed patients give confidential medical information in the GI Lab area and are in various states of undress, but did not claim that this was done in the close vicinity of the staff elevators, nor did she say whether any patients were in that area at the time. Daniels also testified to this incident; he claimed that in July/August he was talking with only one off-duty RN who had just come off the elevator, when O'Rourke told him to leave. O'Rourke testified that for the past two years, whenever she sees an SEIU representative in the hospital, she tells them they are only allowed in the cafeteria. She claimed that everywhere else is a patient care area.

Rick Tomlin (Tomlin) is a Radiology supervisor. He testified to the following: (1) During the TAP campaign, an SEIU agent came to the window at the public registration area of Radiology, asking to speak with certain named TAP employees. Only one was on duty at that time, and he was working. Tomlin went to the window and told the agent, per instructions from his manager, that SEIU could meet only in the cafeteria, or in the break room by pre-arrangement. (2) In September/October he saw Sullivan-Taylor, in what "appeared to be scrubs," sitting and talking to on-duty staff in the hallway near Radiology. He asked what she was doing there; she replied that she was delivering a shirt which an employee won in a union raffle. He said she needed permission to enter the area; she apologized and left.

Sullivan-Taylor also testified: She was not wearing scrubs, but was holding a scrub top, which is what the employee won in the raffle. She had first phoned to tell the employee she had his shirt, but he was on duty, so she decided to go to Radiology to deliver it to him. When she got there, other employees said they would like to have a shirt like that, so she engaged in a brief conversation with them. She said she has never worn scrubs to the hospital since her last day of County employment, August 18, 2007. (3) Approximately two-to-three

months ago, Tomlin saw Sullivan-Taylor in the Radiology "control area," again in scrubs. He did not say what she was doing there, how long she was there, or whether he spoke to her. Tomlin testified that to reach Radiology, one must go through a public door, then a staff door; patient charts and x-rays are in this area.

Letishia Jackson, nurse manager of PCU, testified that in approximately March 2009 she saw several SEIU flyers scattered all over the table and some on the staff BB in the PCU break room. She gathered them up. An SEIU agent who had been in the break room returned and said SEIU had a right to post the flyers. Jackson said the flyers could not be in that location, but she would assist in taking them to the locker room where the union BB was located. The agent said the door to the locker room was locked, so Jackson assisted her by unlocking it. Abbie Blumberg (Blumberg), an SEIU representative assigned to work with SEIU Local 721 during the relevant time, was the agent involved; her testimony was essentially the same as Jackson's. Jackson said she regularly takes SEIU flyers, which she claims are distributed all over the nurse's station, to the locker room. Jackson contends that the union should not talk to employees in the break room because, even though they are on break, they might not want to talk to the union, and because it might delay them from returning to their shift.

Michele Balisi (Balisi), a human resources analyst, testified that in August she saw SEIU flyers affixed to hospital walls. She does not know how they got there, and did not conduct an investigation.

Ken Beckerle (Beckerle) is manager of Ambulatory Care, responsible for all hospital clinics including the Infusion Center, which treats patients for oncology, hydration, blood transfusions and other infusion procedures. To reach the Center, one must go through two doors, the first opening into an interior waiting room, and the second to the patient care area.

He contends that the waiting room contains "sensitive" material including lab reports, patient referrals, and other confidential information. He testified that he saw four people in the waiting room at the Center, three RNs and one SEIU agent. Two RNs were working and the third was talking with the SEIU agent. Beckerle did not say whether the third RN was on duty or whether there were any patients in the area. He asked the agent and the RN to leave and go to the break room or the cafeteria; the SEIU agent said it was not a patient care area, but they did leave. Beckerle went to his office and viewed a prior email from the chief nursing officer which stated that the cafeteria was the "authorized" place for the union to meet with employees. He then he told his nurse manager to quickly find the two and tell them they could only go to the cafeteria. Blumberg was the SEIU representative involved. She testified that an RN had pulled her into a "small office" at the Infusion Center and asked her to stay for the staff meeting about to commence. The clinic manager came in and told her to leave, which she did.

The County argues that all areas within the hospital walls, as well as the outside ambulance/helipad area, where hospital staff enter and exit, are patient care and work areas, as patients may be passing through hallways, lobbies, and waiting rooms, going in and out of elevators, and entering the emergency room while medical staff may be treating them, obtaining confidential information from them, or talking to them. Nevertheless, the County claims that if SEIU had provided advance notice, it would have been accommodated.

SEIU evidence

SEIU representatives testified to several additional instances when they were ejected from their intended areas and directed to the cafeteria, and that the doors to areas which they formerly walked through without incident became locked and "staff only" signs were posted thereon.

Sullivan-Taylor testified as follows:[9] (1) In late June she was headed for the BB in the locker room of the PCU, when she was stopped by a nurse supervisor who said she had orders that Sullivan-Taylor could not be on the floor. Sullivan-Taylor then recalled that there were staff announcements on the union BB, and she told the charge nurse to get them off and she would return later. When she returned, she found the door to the PCU locked and a "staff only" sign posted thereon. (2) In early July she was outside the hospital handing employees flyers announcing a general membership meeting. Jackson approached and told her she could not be there, but Sullivan-Taylor insisted that she was on public property and continued her activity. She testified that three unit employees at first held out their hands for a flyer, but upon seeing Jackson, withdrew their hands and said, "No thank you." (3) In August/September she was visiting a sick friend in PCU. When she walked out of his room into the hallway, Jackson approached and said, "You know you're not allowed here." When Sullivan-Taylor explained that she was visiting a friend, Jackson said she didn't know that and Sullivan-Taylor could remain.

Blumberg testified to two additional incidents during her attempts to meet with RNs at the RCRMC: (1) In July, a nurse manager evicted her from the break room in the Medical Acute Unit. (2) One evening a security guard told her she was not allowed on the floors at night, but only in the cafeteria, and threatened to call the police. Later, while she was talking with unit employees in the cafeteria, a police officer approached and told them they were only allowed to talk in that room. In addition, Blumberg testified that several nurse managers, including Jackson, in OR, ER, ACCU, Labor & Delivery, and Obstetrics, as well as in the Administration area, told her that she could not visit the SEIU BBs and threatened to call

[9] All three incidents occurred after Sullivan-Taylor's retirement, when she was employed by SEIU.

security if she did not leave. Blumberg testified that when she went through public walkways adjacent to patient rooms, she never paused and never looked into the rooms. She said she was aware of union flyers affixed to hospital walls, but had no idea how they got there.

George Daniels[10] has been SEIU regional director, Riverside, for the past two years. He testified that on a Sunday in June he was distributing flyers outside the hospital, between the parking lot and the building. Two security guards approached and told him to leave. He said he was on public property, and continued his activity. The guards went inside and returned with a Moreno Valley police officer, who told him he could not be there. The officer put his hand behind his back and escorted him through the hospital to the human resources office, in view of visitors and unit employees. Someone in the HR office made a few phone calls and then told him he could distribute flyers outside, which he proceeded to do.

Ramon Martinez is an SEIU organizing coordinator. He testified to two incidents: (1) On August 21, he went to Same-Day Surgery accompanied by an RN who had just come off shift. He stood at the door next to the break room while the RN began telling her colleagues that they could meet with him on their breaks. Nurse Manager Louise O'Rourke (O'Rourke) became very angry, yelling and screaming at him that he was not allowed there and that he must leave immediately. O'Rourke escorted him to the elevator and then to the first floor, stating that he could only be in the cafeteria. He then left the premises.

Gregorio Daniels was assigned to work with the represented unit members on the per diem campaign and the CNA raiding activity, from March 2007 until September 2008. He testified to two incidents in addition to the one described above near the staff elevator: (1) In early May, he was on his way to post flyers on the BB located in the OR. O'Rourke told him

[10] Not to be confused with SEIU organizer Gregorio Daniels.

he could not have access, and that she would post his flyers. (2) One weekend day he was outside the building distributing flyers, when a Moreno Valley police officer told him he could not be on any of the floors, but only in the cafeteria. He then went to the cafeteria.

SEIU argues that because of the County's new restrictions, its agents were unable to speak with unit employees not only in the break rooms and locker rooms, but in the cafeteria as well, as employees had only short breaks with not enough time to go from their stations to the cafeteria. They were also unable to post current materials, including notices of SEIU meetings, on the designated BBs, which resulted in their inability to conform to Article XXXI, Section I of the MOU, requiring that "[T]he posting and removal of bulletin board material must be maintained in a timely fashion." SEIU contends that its agents never disrupted work, that they spoke to employees only on their breaks or, if working, merely exchanged greetings, and that the areas which they traversed to get to the break rooms or locker rooms are public access areas where family members and others often pass through. SEIU also contends that the County changed its policies regarding BBs and access beginning in May 2008 by requiring the union to provide prior notice to post flyers or speak briefly with unit employees.

SEIU also contends that the ERR Section 20 is unlawful on its face, because its reference to "work areas" is too vague, given the County's interpretation that it applied to all areas inside the hospital, except for the cafeteria, as well as outside the employee entrance. This allegation is not included in the complaint. However, the issue of work areas and non-work areas is intimately related to the issues in the complaint and was fully litigated by the parties at the hearing. I shall therefore make findings and conclusions on this unalleged violation. (*Santa Clara Unified School District* (1979) PERB Decision No. 104.)

The County complains that SEIU, by its increased and aggressive presence, disrupted working staff and patient care, and it was justified in limiting access. The County also contends that it did not change any policy but was merely trying to enforce the current policies.

ISSUES

1. Did the County unlawfully restrict SEIU access to bulletin boards and employees?

2. Is the ERR unlawful on its face?

3. Did the County unilaterally change its policies on SEIU access to bulletin boards and employees?

4. Did SEIU violate the ERR by distributing flyers and speaking with employees in lawfully prohibited areas?

CONCLUSIONS OF LAW

Access restrictions

SEIU relies on *The Regents of the University of California, University of California at Los Angeles Medical Center v. SEIU Local 660* (1983) PERB Decision No. 329-H (*UCLA Medical Center*), for the proposition that forbidding union access to BBs, employee lounges and break rooms, even where hospital hallways must be traversed, is unlawful interference. The County argues that *UCLA Medical Center* is irrelevant, as it was decided under the Higher Education Employer-Employee Relations Act (HEERA), which specifically guarantees union access,[11] while the MMBA does not provide such a guarantee but at section 3507(a) leaves it up to the employer to "adopt reasonable rules and regulations."

[11] HEERA is codified at Government Code section 3560 et seq. Section 3568 provides:

> Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards,

I disagree with the County. In the fairly recent *City of Porterville* (2007) PERB Decision No. 1905-M (*Porterville)*, decided under the MMBA, the Administrative Law Judge (ALJ) found that the city/employer had unlawfully restricted union rights by requiring prior permission for access to non-work areas. On appeal, the city contended, inter alia, that the MMBA contains no specific statutory right of access. In its appellate decision, PERB noted with approval the ALJ's reliance on access cases decided under other PERB statutes, i.e., the Educational Employment Relations Act (EERA) and the Ralph C. Dills Act (Dills Act),[12] specifically *State of California (California Department* of *Corrections)* (1980) PERB Decision No. 127-S, where, despite the absence of an explicit statutory right of access in the Dills Act, PERB found that such a right is implicit therein. PERB also noted with approval the ALJ's citation to *Regents of the University of California, Lawrence Livermore National Laboratory* (1982) PERB Decision No. 212-H, where PERB stated: "the fact that a provision of general application contained in [other statutes] is not mirrored by a similar or identical provision in HEERA does not mean that the policy embodied by such provision is not applicable to HEERA."[13]

I therefore conclude that unions have a right of reasonable access under MMBA section 3507(a), and that *UCLA Medical Center*, *supra*, PERB Decision No. 329-H, is appropriate precedent with regard to hospital access. There is much relevant language there:

> mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this act.

[12] EERA is codified at Government Code section 3540 et seq. The Dills Act is codified at Government Code section 3512 et seq.

[13] However, in Porterville, *supra*, PERB Decision No. 1905-M, PERB overruled the ALJ and found no violation in one instance because the city had a legitimate business reason and in another because the claim was barred by res judicata and collateral estoppel.

[The record] reflects that large numbers of patients, family members, and friends, as well as medical students and attending physicians frequent the corridors and patient rooms. The speculative evidence offered by UC does not, in our view, establish that the presence of small numbers of union organizers occasionally traversing the corridors of the patient care floors would materially enhance the potential for infection. . . .

Similarly, the record does not indicate that the presence of nonemployee organizers passing through the patient floor corridors enroute to areas where access is permitted would cause additional confusion. There has been no showing that such an occasional presence would disrupt patients or interfere with delivery of health care.

. . .

. . . UC has demonstrated that corridors are commonly used for physical therapy by ambulating patients, and for transportation of patients between treatment areas. We agree with UC's assertion and would characterize them as patient care areas. Similarly, we note that the sitting rooms on the patient floors are used by family and friends of patients for consultation with medical personnel, visits with patients, and rest and recuperation . . . We would characterize them as patient care areas where bans on employee organization solicitation would be presumptively lawful. Nonemployee representatives are thus allowed to utilize corridors on the patient floors only for the purpose of traveling to and from permissible access areas.

We do not characterize the employee lounges, locker rooms, and classrooms as patient care areas. . . UC's restrictions on access to the lounges, locker rooms and classrooms are therefore presumptively unlawful.

. . .

UC argues that, in any event, it has demonstrated that disruption would occur if access were allowed to the patient floors and "A" level of the operating room. It argues that, due to overcrowding and limited space, all areas of the acute care hospital are pressed into service on an "as-needed" basis . . . .

We agree . . . that it would not be appropriate to open up all such multi-purpose areas to access by non-employee representatives because such access would disrupt such functions. The ALJ appropriately denied access to many such rooms. However, as to

> the particular areas at issue herein, there was no showing that the employee lounges and locker rooms are used for such purposes [or that] patients or their families use such areas.

The Board further found in *UCLA Medical Center* that evidence of certain incidents when union agents approached nurses while engaged in medical procedures or talked to them in the corridors while on duty was not accompanied by evidence of any disruption of patient care, and that a limited right of access would not necessarily lead to that result. The Board also considered the "availability of alternative access" as an important factor "in striking a reasonable balance regarding access to health care facilities," citing *Beth Israel Hospital v. NLRB* (1978) 437 U.S. 483 (*Beth Israel)*. The Board credited evidence that the employer had provided "extremely extensive alternative access," but it also found:

> that many employees cannot leave the immediate vicinity of the patient floors during their shift due to patient needs, and that many of those who may be able to leave their work areas do not characteristically do so, due to the shortness of their breaks.

(*UCLA Medical Center, supra*, PERB Decision No. 329-H.)

The County also cites *Beth Israel*, for its holding that hospital rules prohibiting solicitation in "immediate patient care areas" are exempted from the presumption of invalidity which applies to solicitation bans during non-work time in non-work areas, declared in *St. John's Hospital & School of Nursing* (1976) 222 NLRB 1150 (*St. John's*).

Bulletin boards

ERR Section 18 and MOU Article XXXI Section 1 provide that BB space be made available to SEIU, and the County's October 5, 2005, memorandum designates the locations for those BBs. There is no dispute that SEIU representatives must traverse some work areas and some patient care areas in order to reach those BB's. Yet the County has prevented them from doing so. Evidence from both parties shows that in June, Sullivan-Taylor was headed for

the BB in the locker room of the PCU when she was ejected by a nurse supervisor, and when she returned she found the door locked and a "staff only" sign posted thereon; Blumberg was stopped several times in several areas of the hospital by nurse managers who told her she could not visit the union BBs and who threatened to call security if she did not leave; and in May Gregorio Daniels was on his way to post flyers on the BB in the OR when O'Rourke told him he could not have access. In addition, O'Rourke admitted that she has regularly ejected any SEIU representative from the hospital floors and told them to go to the cafeteria.

These actions by the County are contrary to MOU Section 1, which requires SEIU to keep BB postings "maintained in a timely fashion"; to the October 5, 2005, memorandum, arrived at through agreement with SEIU; and to MMBA section 3507(a), as analyzed by PERB in *UCLA Medical Center*, *supra*, PERB Decision No. 329-H.

The County has shown no reasonable justification for its restrictions. Bradley testified to several complaints by staff, but these are hearsay and I do not credit the truth of these complaints. Only three percipient witnesses testified to alleged BB infractions: Baumgarten said she once saw an SEIU agent covering staff announcements with union flyers on a non-union BB; she told the agent to take them down, then escorted her to the locker room where the SEIU BB was located. Jackson once saw union flyers scattered on the table and on a non-union BB in the PCU break room; when the agent returned to the room, Jackson told her that was not a union BB, and led her to the SEIU BB in the PCU locker room. These two incidents hardly constitute an invasion of the hospital or an intentional misuse of BB access rights. The agents in both cases were attempting to use the wrong BBs, and were promptly led to the right ones. Balisi saw SEIU flyers on hospital walls, but she does not know how they got there; I therefore cannot hold SEIU liable. Thus, despite the County's claim that SEIU had changed its

tactics and become disruptively aggressive, there is no evidence here of any general misuse of BB access rights.

Accordingly, I find that by restricting SEIU's access to its designated BBs, the County enforced ERR section 18 in contradiction of MMBA section 3507, that by the same conduct the County interfered with the rights of unit employees in violation of section 3506 and denied SEIU the right to represent its members in violation of section 3503, and that the County thereby committed unfair practices under section 3509(b).

Access to employees

ERR section 20 requires that SEIU make "advance arrangement" prior to visiting employees in work areas. The County contends that all areas of the hospital are work areas as well as patient care areas, and therefore SEIU should have given advance notice. However, in *UCLA Medical Center, supra*, PERB Decision No. 329-H, the Board declared that staff break rooms and locker rooms are not work areas, and that traversing hallways where other members of the public walk would not disturb staff or patient care. Dr. Tabuenca's testimony is in accord with this analysis. Further, Dr. Tabuenca acknowledged that staff engaging in brief casual conversation even while on duty would not disrupt their work. The County has shown no evidence here of SEIU representatives visiting employees in work areas, nor of any disruption of either work or patient care.

As noted above, O'Rourke has ejected all SEIU representatives from the hospital whenever she sees them and has ordered them to the cafeteria. Sullivan-Taylor, George Daniels, Gregorio Daniels, and certain unnamed SEIU agents, who were distributing flyers and speaking with employees outside the hospital building, were all told by either supervisors or Moreno Valley police officers called by management, that they could be there; further, when George Daniels refused to leave, a police officer put his hand behind his back and escorted him

to the human resources office, in view of visitors and unit employees. Yet according to Baumgarten's explanation of when a shift begins and ends, i.e., at the "hand-off" inside the building, employees entering or exiting the building are neither on work time nor in a work area.

Blumberg was ejected from a break room, a non-work area, by a nurse manager; and one evening she was ejected by a security guard who said she was not allowed on the hospital floor at night but could only be in the cafeteria, after which a police officer approached her while she was talking with a unit employee in the cafeteria and said she was restricted to that room. She was also ejected by Beckerle from the waiting room of the Infusion Center where she was speaking with an RN while waiting for a staff meeting to commence; at first Beckerle told them to go either to the break room, a non-work area, or the cafeteria; but upon reviewing a supervisor's prior email, he told a nurse manager to find them and tell them they could only go to the cafeteria. Martinez was standing near a break room, a non-work area, while an off-duty RN told her colleagues they could talk to him in the break room on their break; O'Rourke yelled at him that he was allowed only in the cafeteria and must leave immediately. Baumgarten saw Martinez in the ER hallway over a long period of time, but did not see him speak with any employee or do anything disruptive, yet she told him to leave; when he said he had a right to be there, she escorted him to Administration. O'Rourke saw an SEIU agent in the OR area, but did not describe what he was doing. She saw two agents near the Same-Day Surgery break room, a non-work area, trying to talk with RNs, but she did not say whether the RNs were on duty, were providing patient care, or were even responding to the agents. She saw Daniels near the staff elevator in the GI Lab area talking with RNs, but she did not say how many RNs or whether they were on duty. For his part, Gregorio Daniels testified that he was talking with only one off-duty RN who had just come off the elevator. I credit his

testimony, as it is more complete. There is no evidence that the areas outside the staff elevator banks are work areas, that patients use these elevators, or that medical equipment is kept in these areas. I therefore do not find them to be work areas.

Tomlin witnessed an SEIU agent at the Radiology registration window asking to speak with TAP employees, but the one TAP employee assigned to that department at the time was on duty so Tomlin directed the agent to the cafeteria. He once saw Sullivan-Taylor talking to on-duty staff in the Radiology hallway; when he told her to leave, she apologized and left. He did not say how long she was there or whether the employees were performing work at the time. For her part, Sullivan-Taylor explained that she was there to deliver a shirt which a unit employee won in a union raffle, and other employees were saying they would like a shirt like that. Tomlin also saw Sullivan-Taylor recently in the Radiology area; he did not say how long or what she was doing there. He claimed that both times he saw her she was wearing scrubs, but she testified that she had never worn scrubs since her retirement from the County in October 2007; the shirt she brought for the Radiology employee was a scrub shirt. I credit her testimony as it was forthright and clear.

The County complains of massive and aggressive appearances by SEIU to all areas of the hospital, but the record does not bear this out. The County cites on brief a portion of the transcript where Blumberg was asked on cross-examination how frequently she tried "sneaking into the hospital," and she answered, "Only whenever I had something set up;" which the County argues is her admission of wrongdoing. However, the County omits that portion of the transcript between the question and the answer, i.e., an objection by SEIU counsel and the overruling of the objection. I therefore do not read Blumberg as admitting to "sneaking into the hospital," but rather as responding to how often she went there.

With regard to the above incidents, I find Baumgarten justified in expelling Martinez from the ER hallway, where he had lingered for over an hour, as "[N]on employee representatives are thus allowed to utilize corridors on the patient floors only for the purpose of traveling to and from permitted access areas." (*UCLA Medical Center*, *supra*, PERB Decision No. 329-H.) I also find Tomlin justified in expelling SEIU agents from the Radiology registration window and expelling Sullivan-Taylor from the Radiology hallway, and find Beckerle justified in expelling an SEIU agent from the waiting room of the Infusion Center, as these are considered work areas. (*Ibid.*)

However, the other expulsions occurred when SEIU agents were in non-work areas seeking to speak with employees on non-work time, which cannot be restricted without legitimate justification. (*St. Johns*, *supra*, 222 NLRB 1150.) Further, O'Rourke ejected SEIU agents any time she saw them in the hospital, and Beckerle's Chief Nursing Officer issued a directive to send all SEIU agents to the cafeteria.

The County contends that SEIU should have given advance notice under ERR section 20. However, section 20 requires notice for access to work locations; there is no advance notice requirement in the ERR or the MOU or the MMBA for access to non-work locations. The County argues that ERR section 19, Use of Meeting Places, applies. However, section 19 clearly refers to general membership meetings or meetings with large numbers of employees, not to brief conversations with one or two employees. If section 19 included the latter, there would be no need for section 20. The County contends that at risk are patient rights to prevent the disclosure of confidential information. However, Baumgarten acknowledged that there is an exception in HIPAA to patient conversations overheard in public hallways. The County claims that access to employees in the cafeteria is a reasonable alternative. However, the cafeteria is some distance from many work areas and, as in *UCLA Medical Center*, *supra*,

PERB Decision No. 329-H, many RCRMC employees "who may be able to leave their work areas do not characteristically do so, due to the shortness of their breaks."

I therefore do not credit the Distirct's contentions, and do not find that it has sustained its burden of showing legitimate justifications for any of these expulsions, as required in *Beth Israel*, *supra*, 437 U.S. 483. I find particularly egregious George Daniels' expulsion from a place where he had a right to be, and being escorted through the hospital by the police, with his hand held behind his back, in view of patients, visitors, and unit employees.

Accordingly, I find that the County enforced ERR section 20 in contradiction to MMBA section 3507, that by the same conduct the County interfered with the rights of employees in violation of section 3506 and denied SEIU the right to represent its members in violation of section 3503, and that the County thereby committed unfair practices under section 3509(b).

The ERR on its face

SEIU argues that section 20 is vague and overbroad and therefore contrary to the MMBA.

MMBA section 3507(a) allows an employer to adopt a local rule regarding, e.g., access, but requires that it be "reasonable." PERB Regulation 32603(f)[14] declares it an unfair practice for an employer to "[a]dopt or enforce a local rule that is not in conformance with MMBA." This regulation has been held to require that the employer's rule not "frustrate the declared policies and purposes of the [MMBA]," (*International Brotherhood of Electrical Workers v. City of Gridley* (1983) 34 Cal.3d 191, 202).

[14] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

I find that ERR section 20 can be interpreted and applied in a lawful manner, i.e., to restrict SEIU's access to work areas as defined by legal precedent. The County's misconduct here was its interpretation and application of section 20, not the language itself. I therefore do not find ERR section 20 to be unreasonable or unlawful on its face. (*County of Monterey* (2004) PERB Decision No. 1663.)

Unilateral change

In determining whether a party has violated Government Code 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.)[15] 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 notified the exclusive representative and gave it an opportunity to request negotiations. (*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 Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

Here, SEIU's evidence is undisputed, that prior to May/June 2008, its agents had easy access to both BBs and employees in break rooms. It is also undisputed that since that time, its access to both has been severely restricted, with the County consistently ejecting SEIU agents and insisting that the union must make prior arrangements. It is also undisputed that the

[15] 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.)

County's restrictions have been imposed without providing SEIU with prior notice or opportunity to negotiate.

I find that the County has thereby unilaterally changed the policies stated in ERR sections 18 and 20, and that those changes have had a generalized effect and continuing impact on unit employees, whose access to SEIU representatives and to information provided in SEIU flyers is now limited.

As to whether access is within the scope of representation, MMBA section 3504 includes:

> [A]ll matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment . . . .

This language is similar to, but even broader than the definition in HEERA section 3562(q)(1): "wages, hours of employment and other terms and conditions of employment . . . ." In *Trustees of the California State University* (2007) PERB Decision No. 1926-H, decided under HEERA, PERB clearly held that union access rights were negotiable. As for EERA, section 3543.2 defines the scope of representation as "(a) . . . limited to matters relating to wages, hours of employment, and other terms and conditions of employment," and goes on to enumerate several terms and conditions of employment included therein; access rights are not among them. However, in, e.g., *Woodland Joint Unified School District* (2005) PERB Decision No. 628, *Standard School District* (1987) PERB Decision No. 1775, and *Davis Joint Unified School District* (1984) PERB Decision No. 474, PERB held that union access rights were included as "non-enumerated subjects" under the test set forth in *Anaheim Union High School District* (1981) PERB Decision No. 177. I therefore find access rights similarly negotiable under the MMBA.

Accordingly, I conclude that the County has failed to meet and confer with SEIU regarding changes to its BB and access policies, in violation of MMBA section 3505.

SEIU activity

As analyzed above, the record reflects two instances when SEIU agents posted union flyers on non-union BBs; both times they were quickly corrected and escorted to the proper union BBs. There are also four instances when SEIU agents were in work areas without advance permission, i.e., the ER hallway, the Radiology registration window, the Radiology hallway, and the waiting room at the Infusion Center. As analyzed above, I do not find the two BB incidents to be an intentional misuse of BB privileges. However, having found above that the County lawfully expelled the four SEIU agents from work areas, I must also find that SEIU violated the access rules of ERR section 20, which require prior notice.

Accordingly, I conclude that SEIU committed unfair practices under MMBA section 3509(b).

REMEDY

Pursuant to Government Code sections 3509(a) and 3541.3(i), PERB is given the power:

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

It has been found that the County unlawfully applied the bulletin board and access policies of its ERR, and unilaterally changed the policies set forth therein, by disallowing SEIU access to its designated bulletin boards at the Riverside County Regional Medical Center (RCRMC) and to RCRMC employees in non-work areas on non-work time. It has also been found that SEIU unlawfully violated ERR section 20 by allowing its agents to appear at work

areas of the RCRMC for the purpose of speaking with employees, without advance arrangement. The appropriate remedy is to order the parties to cease and desist from their unlawful actions. It is also appropriate to order the County to rescind its current restrictive policies. It is also appropriate to order the parties to post a notice incorporating the terms of the order. It effectuates the purposes of the MMBA that employees be informed by a notice, signed by an authorized agent, that the respective respondents have acted unlawfully, are being required to cease and desist from their unlawful activity, and that they will comply with the order. (*Placerville Union School District* (1978) PERB Decision No. 69.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found in Case No. LA-CE-470-M that the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA) Government Code section 3500 et seq. The County violated MMBA section 3507 by enforcing its Employment Relations Resolution (ERR) sections 18 and 20 to prohibit access by representatives of SEIU Local 721 (SEIU) to its designated bulletin boards at the Riverside County Regional Medical Center (RCRMC) and to RCRMC employees on non-work time in non-work areas. The County also violated MMBA section 3505 by unilaterally changing the policies set forth in ERR sections 18 and 20 without giving SEIU prior notice or opportunity to bargain. By the same conduct, the County also interfered with the rights of employees in violation of MMBA section 3506 and deprived SEIU of its right to represent employees in violation of section 3503. By all of this conduct, the County committed unfair practices under MMBA section 3509(b).

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

A. CEASE AND DESIST FROM:

1. Prohibiting SEIU access to its designated bulletin boards;

2. Prohibiting SEIU access to non-work areas for the purpose of speaking with small numbers of employees on non-work time;

3. Making unilateral changes in union access policies without providing SEIU with prior notice or opportunity to bargain regarding such changes.

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

1. Allow SEIU access to its designated bulletin boards, notwithstanding that such access may involve traversing hallways, work areas, and patient care areas;

2. Allow SEIU access to non-work areas to speak with small numbers of employees on non-work time without requiring advance arrangement;

3. Provide SEIU with notice and opportunity to bargain prior to making any changes in access policies;

4. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees of the Riverside County Regional Medical Center (RCRMC) 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 it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

5. 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.

It is also found in Case No. LA-CO-85-M that SEIU violated ERR section 20 by allowing its agents to access RCRMC work areas for the purpose of speaking with employees without making advance arrangement, in violation of MMBA section 3509(b).

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

A. CEASE AND DESIST FROM:

1. Allowing its agents to access RCRMC work areas for the purpose of speaking with employees without making advance arrangements with the County as required by ERR section 20.

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

1. Conform to the advance arrangements required by ERR section 20 prior to sending any agent to speak with employees in work areas of the RCRMC.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees of the Riverside County Regional Medical Center (RCRMC) 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 it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (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, § 32300.)

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

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served

on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Ann L. Weinman
Administrative Law Judge