

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



UNITED PROFESSIONAL FIREFIGHTERS,
LOCAL 1230,

Charging Party,

v.

CITY OF PINOLE,

Respondent.

Case No. SF-CE-864-M

PERB Decision No. 2496-M

July 26, 2016

Appearances: Davis, Cowell & Bowe by W. David Holsberry, Attorney, for United Professional Firefighters, Local 1230; Meyers Nave Riback Silver & Wilson by Edward L. Kreisberg, Attorney, for City of Pinole.

Before Winslow, Banks, and Gregersen, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the City of Pinole (City) and by the United Professional Firefighters, Local 1230 (Local 1230) to a proposed decision by an administrative law judge (ALJ) pursuant to the Meyers-Milias-Brown Act (MMBA).¹ The complaint, as amended, alleged that the City violated MMBA sections 3503, 3505, and 3506, and PERB Regulation 32603(a), (b), and (c)² when it unilaterally closed one of its two fire stations for the 2011-2012 fiscal year and when it unilaterally imposed a last, best and final offer requiring unit members to pay an increased contribution to the California Public Employees' Retirement System (CalPERS).

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

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

In his proposed decision, the ALJ concluded that the City had violated the duty to bargain in good faith when it unilaterally voted to close the fire station and thereby repudiated the staffing provision of the parties' memorandum of understanding. However, he dismissed the complaint allegations concerning the increased pension contribution. After exceptions were filed by both parties, the case was placed on the Board's docket on February 14, 2014.

On or about November 21, 2014, Local 1230 filed a "Notice of Charging Party Local 1230's Voluntary Dismissal with Prejudice of its Exceptions to the ALJ's Proposed Decision Relating to the PERS Pension Contribution Issue." As part of this dismissal, Local 1230 withdrew its statement of exceptions to the proposed decision regarding the CalPERS pension contribution issue. According to this notice, Local 1230's dismissal with prejudice was based upon an agreement between the parties that resolved the CalPERS pension contribution issue. This agreement was ratified by Local 1230 and approved by the City of Pinole's city council. The notice was specific in not dismissing and reserving for PERB's decision issues concerning the closure of the fire station. The City did not object to the notice.

On July 5, 2016, the parties filed a letter requesting the complete dismissal of Unfair Practice Case No. SF-CE-864-M, including but not limited to the City's pending exceptions to the proposed decision concerning the closure of the fire station, and any other aspects of Local 1230's charge allegations not already dismissed by the Board. According to the July 5 letter and the "Settlement Agreement and Release Between the City of Pinole and the United Professional Firefighters, Local 1230," submitted with the letter, the parties reached a comprehensive settlement agreement and release concerning the present charge with the assistance of a professional mediator, and the agreement had been ratified by the membership of Local 1230 and approved by the City's city council.

The Board has discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (MMBA section 3509, subd. (a); EERA,³ section 3541.3, subds. (j) and (n); PERB Reg. 32320, subd. (a)(2) [“The Board itself may: . . . take such other action as it considers proper”]; *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S; *Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380; *Oakland Unified School District* (1988) PERB Order No. Ad-171a; *ABC Unified School District* (1991) PERB Decision No. 831b.)

The Board has a longstanding policy favoring voluntary settlement of disputes, such as that achieved by the parties in this case. (*Dry Creek Joint Elementary School District* (1980) PERB Order No. Ad-81a.) The parties have entered into a comprehensive settlement agreement covering the remaining dispute that gave rise to the unfair practice charge and administrative proceedings. Based on the Board’s review of the parties’ requests pursuant to their settlement agreement and the entire record in this matter, the Board finds the request to be in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations.

ORDER

The Joint Request submitted by the parties in Case No. SF-CE-864-M is granted. The parties’ exceptions to the proposed decision are deemed withdrawn. The unfair practice complaint and underlying unfair practice charge are DISMISSED WITH PREJUDICE, and the proposed decision is hereby vacated.

Members Banks and Gregersen joined in this Decision.

³ The Educational Employment Relations Act (EERA) is codified at section 3540 et seq.