

CLIENT NEWS BRIEF

PERB Decision Provides Guidance Addressing “Public Hearing” Requirement

In a recent decision, the Public Employment Relations Board (PERB) addressed the public hearing requirement an agency must satisfy before implementing its last, best, and final offer (LBFO), after completing applicable impasse procedures. In *City of Yuba City* (2018) PERB Dec. No. 2603-M, PERB upheld an administrative law judge decision dismissing an unfair practice charge brought against the City of Yuba City (City) by Public Employees Union Local 1 (Local 1) alleging violation of the Meyers-Milias-Brown Act (MMBA).

Background

Local 1 alleged that the City unlawfully failed to hold a public hearing before imposing a LBFO in violation of section 3505.7 of the MMBA. Government Code section 3505.7 provides that after completing any applicable impasse procedures, and no earlier than 10 days after the parties receive the factfinding report, the agency “may, after holding a public hearing regarding the impasse, implement its [LBFO]....” This case marks the first time PERB has considered violation of the public hearing requirement as a potential standalone violation of the MMBA.

Local 1’s allegations specifically charged that, by identifying the item on the City Council’s agenda as “Local 1 imposition,” rather than as a public hearing regarding the impasse, and by focusing on the need to impose terms rather than on the disputed issues, the City failed to follow the statutory procedures prescribed by the MMBA.

In rejecting this argument, PERB noted that the agenda and staff report described the parties’ bargaining history, and notified the public that the parties had reached impasse and exhausted impasse procedures. Additionally, the union admitted it had the opportunity to prepare for the Council meeting and had received the agenda and staff report. Further, the Mayor “opened up the public hearing” during the public portion of the meeting. Based upon these facts, PERB concluded that the City had satisfied section 3505.7’s requirement to conduct a public hearing regarding the impasse.

Local 1 also argued that the City did not *intend* to hold a public hearing regarding the impasse because (1) the “Local 1 imposition” item did not appear on the agenda where public hearings were required to be listed per the City’s local rules and (2) the City failed to provide adequate notice required under the Brown Act of a public hearing regarding the impasse. PERB also rejected this argument on the basis that the City had adequately informed the public that the City Council would be considering imposing the LBFO and the opportunity for public comment had been provided.

In other words, the fact the item was not described as a “public hearing” on the agenda at a particular location on the agenda did not establish a violation of section 3505.7’s public hearing requirement under the facts. Rather, PERB clarified that section 3505.7’s public hearing requirement is satisfied when the agency (1) provides adequate notice to the public that it intends to consider imposing terms and conditions on employees (the LBFO) and (2) allows public

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CLIENT NEWS BRIEF

March 2019
Number 17

comment concerning the proposed imposition of the LBFO.

Takeaways

While the PERB's decision was dependent upon the facts in this case, there are some important takeaways:

1. After completing impasse procedures and before imposing an LBFO, agencies should ensure that section 3505.7's public hearing requirements are met. To reduce exposure to similar claims, the agenda should clearly describe the item as a "public hearing regarding impasse pursuant to Government Code section 3505.7," or words to that effect. Local rules pertaining to agenda requirements (e.g. location of hearings on agenda and timely posting, etc.) should be followed. Please note the Educational Employment Relations Act does not appear to have a similar public hearing requirement.
2. The staff report should describe the parties' bargaining history, impasse, and compliance with applicable impasse procedures.
3. The item should be considered and deliberated upon in open session during a regular meeting in which public comment is invited.
4. The government agencies should ensure the union is provided with sufficient time to prepare for the public hearing by ensuring the agenda is timely posted and all documents supporting the agenda item are timely provided to the union.

For more information about this decision or about labor law questions in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).