



CLIENT NEWS BRIEF

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A PUBLIC EMPLOYEE UNION MAY NOT CLAIM A “FAILURE TO BARGAIN” OVER NEGOTIABLE EFFECTS IF THE UNION DOES NOT REQUEST TO BARGAIN

In a recent decision, the Public Employment Relations Board (PERB) affirmed that, in order to file a “failure to bargain” charge, a public employee union must actually demand to bargain effects of a non-negotiable decision, even if the employer never gave formal notice of the decision. The case was decided under the Ralph C. Dills Act which applies to state employees; however, the decision was based on PERB precedent decided under the Educational Employment Relations Act (EERA) and has implications for public school employers.

In *CCPOA v. State of California (Department of Corrections & Rehabilitation, Avenal State Prison)* (2011) PERB Decision No. 2196-S, a dispute arose over the Avenal State Prison’s (AVP) unilateral change to its policy for conducting unannounced random searches of all persons entering the AVP grounds. The California Correctional Peace Officers Association (CCPOA) first learned of the policy change when the new policy was implemented in May 2009. AVP did not provide formal notice of the change to CCPOA and, once the policy was implemented, CCPOA did not request to bargain over the effects of the policy change. Instead, CCPOA filed a PERB charge claiming that AVP failed to bargain the policy change and its effects. PERB held the decision to change the policy was non-negotiable, and that CCPOA could not charge that AVP failed to bargain over the effects of the policy change because CCPOA never communicated its interest in bargaining over the effects.

PERB’s decision is a reminder that “an employee organization is entitled to reasonable notice and an opportunity to bargain over the ‘reasonably foreseeable’ negotiable effects of a non-negotiable decision.” However, in certain circumstances, a public employer may be excused from providing the union with notice of a change in non-negotiable policy that may have negotiable effects. This includes situations where formal notice is not given but the employee organization received actual notice of a decision (through its membership) and when there is no evidence of negotiable effects resulting from the decision. As this decision shows, PERB will not allow a union to claim a “failure to bargain” in such cases unless the union has timely made a request to bargain that clearly identifies the effects or impacts that the management decision had on a negotiable matter.

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If you have any questions about this decision or about the duty to bargain in general, please contact one of our [eight offices](#) located statewide or consult our [website](#).

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