

CLIENT NEWS BRIEF

PERB Articulates Duties Of Employer When Faced With Internal Union Strife

In *City of Arcadia* (2019) PERB Dec. No. 2648-M, the Public Employment Relations Board (PERB) grappled with a variety of issues surrounding a public employer's duties in the face of warring factions within one of its unions, as well as the propriety of "exploding" offers—an offer or proposal that expires on a given date—in the context of labor negotiations.

PERB held that the City unlawfully interfered with internal union affairs when its police chief encouraged a union representative to oust its president, and violated its duty to meet and confer in good faith when it unilaterally set ground rules in advance of negotiations, invited a non-leadership union member to a pre-negotiations meeting without notifying the union's official representatives, and made an exploding offer without adequate justification.

An Employer Interferes with Internal Union Affairs by Offering an Incentive for a Change in Union Leadership

Bargaining units have a right to choose their leaders without employer interference. In this case, after receiving reports of unprofessional conduct by the union president, the Chief of Police informed the vice president of the Arcadia Police Civilian Employees Association (Association) that he was cancelling the regular labor-management meetings between the City and the Association until the president no longer held that position.

PERB held that this encouragement to remove the union president constituted interference under the Meyers-Milias-Brown Act (MMBA). Suspending the labor-management meeting until a change in union leadership constituted an incentive for the union to oust its president. A reasonable employee would have viewed his comments as inserting the employer into internal union affairs and/or favoring one faction over another, and as promising a benefit if members took a particular action with respect to their leadership.

An Employer Does Not Engage in Interference by Temporarily Recognizing and Bargaining with a Newly Elected Board

An employer must maintain strict neutrality between bargaining units, as well as between competing factions within the same unit. At the same time, the employer remains obligated to deal with the union regardless of internal strife, and may have little choice but to recognize one faction on an interim basis, pending resolution of the internal union dispute. Here, members of the Association voted out existing leadership and replaced them with different members. The new leaders informed the City Manager of the election results and provided supporting documentation. The ousted president informed the City Manager that she disputed the results of the election, but the City Manager stated that he would negotiate with the newly elected Board.

While an employer may violate the MMBA if it favors one internal faction over another in a manner that materially strays from a good faith effort to comply with its duty to deal with the union's chosen representatives, here PERB held that the City properly maintained its neutrality and complied with its good faith duty to bargain when it temporarily recognized one faction over the other.

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An Employer Commits a Per Se Violation of its Duty to Bargain in Good Faith by Unilaterally Imposing Negotiations Ground Rules

It is a per se violation of the employer's duty to bargain in good faith if it unilaterally imposes ground rules in advance of negotiations. Here, the City Manager informed the bargaining units that negotiations would commence much earlier than anticipated, that the early start date would be paired with an "accelerated" approach capped by a specific deadline and, in the absence of a deal by the deadline, there would be a "cooling off" period during which there would be no negotiations. PERB held that this constituted a per se violation of the duty to negotiate in good faith.

PERB Held that the City Violated its Duty to Bargain in Good Faith Based on Totality of Circumstances

PERB also held that under the totality of circumstances, the City acted in bad faith in its bargaining conduct with the Association. PERB based its holding on three indicia:

1. The City's unilateral imposition of ground rules, discussed above;
2. The City's undermining of the Association's selection of its representatives; and
3. The City's "exploding" offer.

PERB held that the City undermined the Association's selection of its representatives when it invited a former Association Board member who had resigned from her position years earlier, to a pre-negotiations meeting. That employee attended the meeting—which was reserved for union representatives—without the City notifying the union leadership. This act undermined the Association's selection of representatives by giving the unauthorized member detailed information about negotiations, elevating her at the expense of the designated representatives.

PERB also held that an "exploding" offer (an offer or proposal that expires on a given date), without an adequate explanation for its termination date, indicates bad faith bargaining. Such an offer is a form of regressive bargaining—making proposals that are less generous to the other party than prior offers. These tactics are indicative of bad faith unless supported by adequate explanation of a legitimate purpose for the expiration, such as changed economic conditions or other changed circumstances.

Here, the City indicated to the Association that a "signing bonus" would not be on the table if the Association and City did not strike a deal by the end of November. The City explained that the deadline was necessary because of the City Council election in the spring, and the new Council could have different budgetary goals. PERB rejected this explanation, because there were several months between the deadline and the election, and it was speculative whether the election would lead to a new Council with goals so different as to change the City's bargaining position.

Takeaways

Public agency employers' obligations to bargain in good faith do not change when there is internal union strife. In such circumstances, employers should ensure they continue to engage in good faith negotiations, which may require temporary recognition of one faction over another until the internal union disputes are resolved. Employers should also be wary of presenting exploding offers, as such proposals are only lawful if the employer can demonstrate changed economic conditions or other changed circumstances to support its position. It is crucial to note that PERB's assessment of the lawfulness of employer behavior in the face of internal union strife is very fact specific, so it is important that all employer bargaining team members understand their obligations under such circumstances.

If you have questions regarding this PERB decision, or to discuss any employee bargaining matter or labor 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](#).