



# CLIENT NEWS BRIEF

November 2011

Number 73

## SIDE LETTER AGREEMENTS DO NOT AUTOMATICALLY EXPIRE UPON RATIFICATION OF A SUBSEQUENTLY NEGOTIATED CONTRACT

The Public Employment Relations Board (PERB) recently issued a decision clarifying the use of side letter agreements and when they expire.

In Palomar Community College District (2011) PERB Decision No. 2213-E, PERB considered the duration of a 2005 side letter agreement regarding the discipline of campus police officers in light of a 2006 amendment to the parties' collective bargaining agreement. The 2005 side letter did not include an expiration date or any terms regarding duration. Similarly, the 2006 amendment to the agreement did not alter the discipline provisions at issue and did not contain any clauses or provisions which expressed the intent to supersede or modify the side letter, such as zipper, merger, integration, or entire agreement clauses.

PERB found no evidence that the parties intended to discontinue the 2005 side letter by amending the agreement in 2006. PERB explained, "At its most basic, a side letter is a contract between the parties." Thus, the duration of a side letter is dictated by the provisions of the side letter itself or by the subsequent conduct of the parties. Absent a provision in the contract, an agreement between the parties, or other evidence the parties intended the side letter to expire, the term of a side letter does not automatically end upon ratification of a subsequently negotiated contract. Therefore, it is advisable for a district to consider how long a side letter is intended to be in place, and to ensure that the side letter agreement reflects that intent.

If you have any questions regarding this decision or need assistance interpreting the duration of any existing side letters, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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