STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

YUBA COUNTY EMPLOYEES' ASSOCIATION, LOCAL #1, Charging Party, v. COUNTY OF YUBA, Respondent.	Case No. SA-CE-195-M PERB Decision No. 1699-M October 20, 2004

Appearances: Gary Stucky, Executive Director, for Yuba County Employees' Association, Local #1; Beverly J. Capaci, Personnel Director/Risk Manager, for County of Yuba.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Yuba County Employees' Association, Local #1 (Association) from a Board agent's dismissal (attached) of its unfair practice charge. The unfair practice charge alleged that the County of Yuba (County) violated the Meyers-Milias-Brown Act (MMBA)[1] by unilaterally changing salary differentials.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letter, the Association's appeal and the County's response. The Board finds the Board agent's dismissal letter to be free of prejudicial error and adopts it as the decision of the Board itself, subject to the discussion below.

[1]The MMBA is codified at Government Code section 3500, et seq.

DISCUSSION

The Association alleges in its unfair practice charge that the County has a policy and practice of maintaining a set salary differential between eligibility supervisors and two other classifications, system support analysts and the program specialists. According to the Association, the salaries of system support analysts and program specialists are supposed to be set at approximately 5 percent below that of eligibility supervisors. In November 2000, the County increased the salary schedule of eligibility supervisors by 9.5 percent. The County did not correspondingly increase the salary schedules of support analysts and program specialists. By its failure to do so, the Association alleges that the County committed an unlawful unilateral change in the terms and conditions of employment.

In order to state a prima facie case, the Association must demonstrate that the County had a policy or practice of maintaining a set salary differential between the classifications at issue. The Board agent found that the Association failed to meet this requirement. The Board agrees. Here, there is simply no evidence that the County committed itself to maintaining a 5 percent salary differential between the affected classifications. While the County did adjust salaries in the past to maintain such a differential, there is no evidence that the County's actions represented more than a one-time salary adjustment. Accordingly, the unfair practice charge must be dismissed.

ORDER

The unfair practice charge in Case No. SA-CE-195-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

STATE OF CALIFORNIA NOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8385
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July 30, 2004

Gary Stucky, Executive Director
Yuba County Employees Association, Local #1
718 Bridge Street, Suite A
Yuba City, CA 95991-3803

Re: Yuba County Employees' Association, Local #1 v. County of Yuba
Unfair Practice Charge No. SA-CE-195-M
DISMISSAL LETTER

Dear Mr. Stucky:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 26, 2003. The Yuba County Employees' Association, Local #1 alleges that the County of Yuba violated the Meyers-Milias-Brown Act (MMBA)[1] by unilaterally changing salary differentials.

I indicated in the attached letter dated June 16, 2004, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that unless you amended the charge to state a prima facie case or withdrew it prior to June 25, 2004, the charge would be dismissed. Your request for an extension of time was granted and an amended charge was filed on July 16, 2004.

When the classifications of System Support Analyst and Program Specialist were created in 1996 and 1997 respectively, the Association and the County agreed that the salaries for these classifications would be aligned in relationship to that of the Eligibility Supervisor classification. Subsequently, in 2000 the County initiated a major classification/salary review of its job classifications. In the first phase of the study, the County approved a salary increase for the Eligibility Supervisor class. However, the County did not revise the salaries of the System Support Analyst and Program Specialist classifications to maintain the salary alignment. Although the Association sought to restore the salary alignment, the County asked the Association to delay discussion of salaries for these classifications until the next phase of the classification study.

County staff concluded the final phase of its classification/salary review and issued draft recommendations concerning the remaining classifications. Rather than assigning a salary to

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

each remaining classification, the staff recommendation proposed a longevity pay plan, findings/recommendations regarding some classifications, and a proposal to adopt a revised pay range table. The staff recommendation also contained a table that outlined the range of educational requirements and preferred work experience that the County indicated it wanted to use to determine the allocation of classifications to the new condensed salary range table.

The amended charge states that County staff made it clear to the Association that it did not have the authority to negotiate the draft recommendations because the recommendations had not been approved by the Board of Supervisors. The Association alleges that it did not have an opportunity to negotiate the salary alignment issue for the System Support Analyst and Program Specialist classifications following issuance of the class study recommendations.

The Association and the County were parties to a MOU effective January 1, 2000 through December 31, 2003. Because the Association membership was interested in the longevity pay plan contained in the classification review recommendation, the Association and the County initiated negotiations in early 2003 for a successor MOU, well before expiration of the existing MOU.

During these negotiations, the County submitted a pay-band proposal that allocated classifications, including System Support Analyst and Program Specialist, to one of 50 pay ranges on the new salary range table. The Association countered with a proposal that included the System Support Analyst and Program Specialist salary alignment. The County refused to negotiate on the subject of salary alignment.

The County's last proposal included a longevity pay plan and a commitment to pay the major portion of any health insurance premiums. The County insisted, however, on the pay-banding proposal. The County also withdrew its conceptual agreement of the Association's proposal for a process to appeal classification and salary issues.

While the Association leadership was not pleased with the County's conduct in negotiations, it also did not want to risk the loss of important contract improvements. So the Association decided to submit the County's last offer, without recommendation, to its members for consideration. The membership approved the contract, including the County's pay-banding proposal.

The amended charge alleges that in the late 1990's the Association and the County reached an agreement on salary alignments for the System Support Analyst and Program Specialist classifications. This salary alignment was established through negotiations and "long-standing practice." The Association alleges that the County never specifically negotiated a change to this alignment. Thus, the County made an unlawful unilateral change in policy when it failed to maintain the prior salary alignment.

As discussed in the attached letter, unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented

before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813; Grant Joint Union High School District (1982) PERB Decision No. 196.)[2]

In the late 1990's, the Association and the County reached an agreement to align the salaries of the new System Support Analyst and Program Specialist classifications with the classification of Eligibility Supervisor. Between 2000 and September 2002, the County conducted a classification/salary review study. The classification study resulted in proposals which eliminated the prior salary alignment and proposed pay-banding. The Association and the County initiated negotiations in early 2003 for a successor MOU. These negotiations addressed the County's proposal for pay-banding. The Association's proposal for a salary alignment for the System Support Analyst and Program Specialist classifications was rejected by the County.

Fully aware that the County's proposal did not include a salary alignment, the Association submitted the County's proposed MOU to its membership. The Association membership approved the agreement.

These facts do not demonstrate that the County unilaterally eliminated the prior salary alignment without meeting and conferring with the Association. The County proposed an alternate salary plan which affected all County classifications. While the Association's bargaining team did not agree with the pay-banding proposal, it submitted the proposal to its membership for their consideration. The membership considered and approved the pay-banding proposal with the understanding that the salary proposal did not include the prior alignment for the System Support Analyst and Program Specialist classifications. The Association membership's ratification of the County's proposal eliminated any further need by the County to specifically negotiate the elimination of a salary alignment for the System Support Analyst and Program Specialist classifications. Accordingly, the charge does not state a prima facie case and is dismissed.

Right to Appeal

Pursuant to PERB Regulations,[3] you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

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[2] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

[3] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By
Robin W. Wesley
Regional Attorney

Attachment

cc: Beverly Capaci

STATE OF CALIFORNIA NOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
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June 16, 2004

Gary Stucky, Executive Director
Yuba County Employees Association, Local #1
718 Bridge Street, Suite A
Yuba City, CA 95991-3803

Re: Yuba County Employees' Association, Local #1 v. County of Yuba
Unfair Practice Charge No. SA-CE-195-M
WARNING LETTER

Dear Mr. Stucky:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 26, 2003. The Yuba County Employees' Association, Local #1 alleges that the County of Yuba violated the Meyers-Milias-Brown Act (MMBA)[1] by unilaterally changing salary differentials.

Investigation of the charge revealed the following information. The Association is the exclusive representative for employees assigned to the Office/Clerical, Craft/Maintenance, Technical, Professional and Supervisory Units.

In 1996, the County created the SAWS System Support Technician classification. Following negotiations with the Association, the parties agreed that the salary for this classification would be aligned with that of Senior Eligibility Technician. The classification title was later changed to System Support Analyst.

In April 1997, the Social Services Program Specialist classification was established by the County. The parties agreed that the classification salary would be "aligned at 10% above the Eligibility Supervisor." The classification title was later shortened to Program Specialist.

In December 1999, Personnel Director Roger Carey met with the Association at the request of the System Support Analysts who had been seeking a classification review. Although discussions were ongoing as to which division and series the classification actually belonged, Mr. Carey agreed that a final determination of division/series should not hold up a salary increase for this classification. The parties negotiated a salary increase to set the System Support Analyst salary at 5% below the Eligibility Supervisor classification.

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Mr. Carey planned to retire before he would have an opportunity to bring the proposed salary increase to the Board of Supervisors. Mr. Carey informed the Association he would recommend the increase to new Personnel Director Beverly Capaci.

On June 12, 2000, following further discussions with the Association, Ms. Capaci brought the System Support Analyst salary increase to the Board of Supervisors. Ms. Capaci's memo to the Board of Supervisors stated, in part:

> Historically, this position has been aligned with the Eligibility Worker III level, but with the added level of responsibilities that have grown in the last few years, it should be higher. This increase would make the position 4.5% below our Eligibility Supervisor class, and therefore keep our county relationships in line.

During this period, the County initiated a major classification/salary review. The classification study began with the Human Services Agency Eligibility and Employment Programs. After negotiations with the Association, the parties agreed to increase salaries assigned to the Eligibility Technician classification series, which includes the Eligibility Supervisor class. The Association proposed that the County include the System Support Analysts and the Program Specialists in the salary adjustment to maintain the salary differentials between these classifications and that of Eligibility Supervisor. The County refused to negotiate salary increases for these classifications stating that these classes would soon be reviewed as part of the County's classification study and their salaries would be negotiated at that time.

On November 28, 2000, the Board of Supervisors approved a 9.5% salary increase for all classes in the Eligibility Technician series retroactive to November 1, 2000.

The Association continued to seek restoration of salary differentials between System Support Analysts and Program Specialists, and the Eligibility Supervisor classifications, bringing up the issue numerous times in correspondence and meetings. The County continued to maintain that the parties had never established fixed salary differentials and that these classifications would soon be reviewed as part of the County-wide classification study.

The next phase of the County's classification study focused on the social worker series. Recommended adjustments to these classifications were approved on June 12, 2001. The remaining job classifications were reviewed and recommended changes were presented to the Board of Supervisors in September 2002. The Association participated in negotiations regarding the proposed changes, including recommendations regarding the System Support Analyst and Program Specialist classifications.

The Association and the County were parties to a MOU effective January 1, 2000 through December 31, 2003. In early 2003, the parties reached an agreement on a successor MOU to be effective January 1, 2004 through June 30, 2006. The parties negotiated a pay banding provision which states:

> Establish pay banding to eliminate minor differences in pay for similar work, and to establish criteria for determining compensation levels for all positions, to be implemented January 1, 2006. Reference attached Pay Banding information. Any disputes on pay-band placement, may be submitted directly to the Personnel Director for resolution.

Attached to the MOU is a chart placing each classification, including System Support Analysts and Program Specialists, in a pay range. The new salaries established through the pay banding agreement are set to be implemented on January 1, 2006.

Based on the facts stated above, the allegation that the County unilaterally changed salary differentials does not state a prima facie case.[2]

In determining whether a party has violated Government Code section 3505 and PERB Regulation 32603(c),[3] PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.)[4] Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813; Grant Joint Union High School District (1982) PERB Decision No. 196.)

The charge does not provide evidence that the parties negotiated fixed salary differentials, which would result in an automatic salary increase for System Support Analysts and Program Specialists if the Eligibility Supervisor classification received a pay increase. References to salaries in relation to other classification pay rates does not to demonstrate a permanent link

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[2] The alleged unlawful unilateral change occurred on November 28, 2000 when the Board of Supervisors approved a salary increase for the Eligibility Technician classifications, nearly three years prior to the filing of the charge. At this time, the statute of limitations under MMBA is three years. (City of Anaheim (2003) PERB Order No. Ad-321.) However, a ruling by the California Supreme Court in PERB v. Coachella Valley Mosquito and Vector Control District, Case No. S122060 may modify that rule.

[3] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[4] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

between salaries. Further, discussions with the County in December 1999 indicated that the System Support Analyst classification had not yet been properly aligned with the appropriate classification series. This action awaited the County's classification study.

However, even if a salary differential had previously been negotiated, the parties subsequently reached agreement on the salary for these classes following the County-wide class study. Further, in early 2003, the parties again negotiated salaries for these classifications when they established pay banding, which placed the System Support Analyst and Program Specialist classifications in specific pay rate categories. These pay rates are to be implemented on January 1, 2006. When the parties negotiated changes to pay rates for these classifications, the new agreements superceded any prior agreement. Thus, these facts do not demonstrate an unlawful unilateral change in policy and the charge must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before June 25, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robin W. Wesley
Regional Attorney