

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 188,

Charging Party,

v.

CITY OF RICHMOND,

Respondent.

Case No. SF-CE-157-M

PERB Decision No. 1720-M

December 13, 2004

Appearances: Davis & Reno by Duane W. Reno, Attorney, for International Association of Firefighters, Local 188; Renne Sloan Holtzman & Sakai by Charles Sakai, Attorney, for City of Richmond.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the International Association of Firefighters, Local 188 (Local 188) from a Board agent's partial dismissal of its unfair practice charge. The charge alleged that the City of Richmond (City) violated the Meyers-Milias-Brown Act (MMBA)¹ by refusing to provide information, failing to meet and confer over the decision and/or effects of a layoff and by violating a local rule.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letter, Local 188's appeal and the City's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

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

DISCUSSION

Negotiability of Layoff Decision

The primary issue in this matter is whether a decision to layoff employees is within the scope of representation under the MMBA. The Board holds that it is not. Local 188 argues that Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507] (Vallejo), holds to the contrary. In Vallejo, the California Supreme Court addressed whether a personnel reduction proposal was within the scope of representation under the MMBA. Local 188 cites to the portion of the decision which states:

On the other hand, because of the nature of fire fighting, a reduction of personnel may affect the fire fighters' working conditions by increasing their workload and endangering their safety in the same way that general manning provisions affect workload and safety. To the extent, therefore, that the decision to lay off some employees affects the workload and safety of the remaining workers, it is subject to bargaining and arbitration for the same reasons indicated in the prior discussion of the manning proposal. [Vallejo at p. 622.]

As Local 188 interprets the above-quoted language, Vallejo makes negotiable any layoff decision affecting workload or safety. This Board disagrees.

In citing to Vallejo, Local 188 ignores the immediately preceding paragraphs of the decision in which the Court finds that:

A reduction of the entire fire fighting force based on the city's decision that as a matter of policy of fire prevention the force was too large would not be arbitrable in that it is an issue involving the organization of the service.

Thus cases under the NLRA indicate that an employer has the right unilaterally to decide that a layoff is necessary, although it must bargain about such matters as the *timing* of layoffs and the *number* and *identity* of the employees affected. (Id. at p. 621; emphasis in original.)

Thus, by its plain language, Vallejo supports the Board's holding that a decision to layoff employees is not within the scope of representation under the MMBA. The portion cited by Local 188 merely holds that the effects of a layoff decision, for example, workload and safety issues, are negotiable. Such an interpretation is consistent with long-standing PERB precedent addressing the negotiability of layoff decisions. In Newman-Crows Landing Unified School District (1982) PERB Decision No. 223 (Newman-Crows), the Board recognized that although:

The layoff of employees unquestionably impacts on their wages, hours, and other conditions of employment. It may concurrently impact upon those employees who remain. Nevertheless, the determination that there is insufficient work to justify the existing number of employees or sufficient funds to support the work force, is a matter of fundamental managerial concern which requires that such decisions be left to the employer's prerogative.

In the 22 years since Newman-Crows, the Board has not waived from this position. The Board finds nothing in Vallejo or the text of the MMBA requiring a departure from this well-established rule.²

Negotiability of Layoff Effects

Although the decision to layoff employees is not within the scope of representation, the effects of the layoff are within scope. (Newman-Crows.) Neither party disputes this rule. The issue here is whether Local 188 requested to bargain over the effects of the layoff decision.

Under Newman-Crows, a demand to bargain over a non-negotiable decision will not be interpreted as also a demand to negotiate over the effects of the decision. (Id.) Further, any demand to bargain over effects must also clearly identify the negotiable areas of impact. (Id.)

Where the union requests only to bargain over the non-negotiable decision, and gives no notice

²Having found that a decision to layoff employees is not within the scope of representation under the MMBA, it is not necessary to address whether Local 188 waived its right to negotiate in the collective bargaining agreement. Accordingly, the portion of the warning and dismissal letter discussing waiver is not adopted by the Board.

of its desire to negotiate over effects, PERB has held that the union has waived its right to bargain over effects. (Id.)

Here, Local 188 asserts that it requested to bargain over the effects of the City's decision to layoff unit members. However, neither the charge nor amended charge supports such a contention. It is undisputed that Local 188 repeatedly requested to bargain over the decision itself. However, as discussed above, such a request is not sufficient to constitute a request to bargain over effects. (Id.)

Local 188 also contends that it requested information from the City about the impact of the layoffs on workload and safety. Local 188 argues that its request for information should have been interpreted as a request to bargain over such effects. Under Newman-Crows, however, such a request falls short of placing the City on notice that Local 188 was making a demand to bargain.

ORDER

The partial dismissal in Case No. SF-CE-157-M is hereby AFFIRMED.

Chairman Duncan and Member Whitehead joined in this Decision.