STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEAMSTERS LOCAL 542, Charging Party, v. COUNTY OF IMPERIAL, Respondent.	Case No. LA-CE-293-M PERB Decision No. 1916-M June 28, 2007
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS IMPERIAL COUNTY EMPLOYEES CHAPTER 2004, Real Party in Interest.	

Appearances: Tosdal, Smith, Steiner & Wax by Fern M. Steiner, Attorney, for Teamsters Local 542; California School Employees Association by Madalyn J. Frazzini, Deputy Chief Counsel, for California School Employees Association and its Imperial County Employees Chapter 2004.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by California School Employees Association and its Imperial County Employees Chapter 2004 (CSEA) of a proposed decision by an administrative law judge (ALJ). The unfair practice charge filed by Teamsters Local 542 (Teamsters) alleged that the County of Imperial (County) violated the Meyers-Milias-Brown Act (MMBA)[I] when it declared an election invalid for failure to meet the minimum requirements of a local rule. The

[I]MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Teamsters alleged this local rule is an unreasonable local rule in violation of MMBA sections 3507 and 3507.l(a).

The dispute in this case arises from subdivision f, of section X (Rule XC£)) of the County's Employer-Employee Relations Policy (EER Policy) which provides, among other things, that a representation election is valid only if a majority of eligible employees vote in the election. In January 2006, the Teamsters sought decertification of CSEA as the exclusive representative for these units. A representation election was held and Teamsters received a majority of the votes cast for each unit. A majority of eligible voters, however, did not vote in the election. Consequently, pursuant to Rule X(i) of the EER Policy, the County declared the election invalid.

The ALJ ruled that the majority participation rule set forth in Rule X(f) (hereinafter referred to 50 percent participation rule) violated the MMBA and ordered the County to cease and desist from implementing the rule. Notwithstanding the invalidation of the 50 percent participation rule, the ALJ found the implementation of the rule did not impact the tally of ballots. Accordingly, the ALJ upheld the election results and certified the Teamsters as the exclusive representative based on their receipt of the majority of votes cast in the election. CSEA appealed, asserting the proper remedy in this matter is the invalidation of the election.

The Board has reviewed the entire record in this matter. As discussed in the decision below, we agree with the ALJ that the 50 percent participation rule violates the MMBA and that the County's enforcement of that rule constitutes unlawful interference, but do so based on our own rationale. We further find the invalidation of the 50 percent participation rule did not

impact employee choice in these elections. Accordingly, we conclude the election results should be upheld and certify the Teamsters as the exclusive representative of the units in question..[2]

BACKGROUND

On June 22, 2006, the Teamsters filed an unfair practice charge with PERB alleging the County unlawfully maintained the 50 percent participation rule, and unlawfully implemented that rule to invalidate elections in which the Teamsters received a majority of votes cast. On June 26, 2006, CSEA was joined as a party to the PERB proceedings.

On June 23, 2006, the Teamsters requested injunctive relief. CSEA and the County opposed the request. On July 5, 2006, PERB denied the request for injunctive relief. Also on July 5, 2006, the General Counsel of PERB issued a complaint alleging that the 50 percent participation rule violates MMBA section 3507.l, that the County's implementation of that rule to invalidate elections interfered with the employee rights in violation of MMBA section 3506[3], and that both acts of the County are unfair practices under MMBA

[2]The Board does not adopt the proposed decision.

[3]MMBA section 3506 states:

> Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502.

section 3509(b)[4] and PERB Regulation 32603(f).[5] In its answer, the County denied all wrongdoing.

No informal conference was held on this matter. There were no factual disputes, the parties were encouraged to submit a stipulation of facts and documents to be used as the record of the case in lieu of an evidentiary hearing. The parties submitted such a stipulation on July 25, 2006. After the submission of post-hearing briefs', the parties submitted an amended stipulation on September 20, 2006 with regard to one item not at issue and the matter was submitted for proposed decision.

FINDINGS OF FACT

The facts are undisputed. The County is a public agency within the meaning of MMBA section 3501(c). The Teamsters is an employee organization within the meaning of Section 350l(a), and CSEA is a recognized employee organization within the meaning of Section 350l(b).

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[4]MMBA section 3509(b) states, in pertinent part:

> A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an unfair practice charge by the board.

[5]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32603(i) states, in part:

> It shall be an unfair practice for a public agency to do any of the following:
>
> (f) Adopt or enforce a local rule that is not in conformance with MMBA.

The parties stipulated to the following facts, and the Board so finds:[6]

1. On February 3, 1969, the County Board of Supervisors adopted an Employer-Employee Relations Policy (EER Policy) after meeting and conferring with representatives of its then three employee organizations. This EER Policy included, in part, local rules for certifying employee organizations under the MMBA and for the holding of representation/decertification elections.

2. The 1969 EER Policy was amended by the County Board of Supervisors on January 26, 1973, after meeting and conferring with representatives of employee organizations representing the County's employees.

3. On April 14, 1981, the County Board of Supervisors adopted descriptions of its then final bargaining units and a revision to its 1973 EER Policy after meeting and conferring with its then-existing employee organizations. In addition to the previous requirement in Rule X(f), of the County's 1973 EER Policy that it takes a plurality of the votes of eligible employees voting in a unit to certify/decertify an employee organization, the 1981 amendment required that, in a representation/decertification election for an exclusive representative, a majority of the eligible employees in a bargaining unit must vote in the election for it to be a valid election. (The 1981 EER Policy was submitted as Exhibit A to the stipulation.)

4. In 1981, there were a total of eight bargaining units of County employees, including the Crafts, Labor and Trades Unit, the Clerical Unit, and the then-entitled Technical and Inspection Unit (now called the Technical Unit due to a unit modification severing the inspectors and placing them in the Professional Employee Unit). Section VII of the 1981

[6]The stipulated facts set forth herein have been slightly modified for the purposes of internal consistency within this decision. No material or substantive changes were made to the stipulations submitted by the parties.

EER Policy then provided that: "All employees in a particular job classification, including probationary, seasonal, part-time, extra help, temporary and limited term employees in such classifications, shall be included in one appropriate unit." This provision was changed in about 2000.

5. In 1981, there were three employee organizations recognized by the County - the Imperial County Sheriffs Association, the Professional Employee Group, and the Imperial County Employees Association.

6. On September 23, 1981, the employees in the Clerical, Technical and Crafts, Labor and Trades Units voted to be represented by the Laborers International Union, Local 1184, also known as the Imperial County Employees/Laborers Local 1184/AFL/CIO (Laborers Local 1184). This election took place in accordance with the rules of the County's 1981 EER Policy in effect at the time, which included the minimum participation rule.

7. Laborers Local 1184 was the exclusive representative of the Clerical, Technical and Crafts, Labor and Trades Units until December 13, 1988, when CSEA was certified as the result of a decertification election which occurred on November 30, 1988 and December 1, 1988. In that election, 204 ballots were issued, 201 valid ballots returned, and the vote was 120 for CSEA and 26 for the incumbent union in the Clerical Unit. The vote in the Technical Unit was 129 for CSEA, and 17 for the incumbent union. In the third unit, the Crafts, Labor and Trades Unit, Laborers Local 1184 contended that CSEA did not have a sufficient number of signatures on its petition (less than 30 percent) to get an election in that unit, that the election in the third unit was therefore invalid, and that the votes in that unit should not be counted. That dispute was resolved without litigation. The votes were counted by State Mediation and Conciliation Services (SMCS), and it was determined by SMCS that CSEA had

a majority of the votes cast in that unit. The same rules in current Rule X(f) of the County's EER Policy, including the minimum participation rule, were applied to the elections in all three units. Laborers Local 1184 did not contest the ballot count or the County's rules.

8. In about January of 1998, the Teamsters filed two decertification petitions with the County regarding the three units currently represented by CSEA and the subject of this proceeding. The petitions commingled the three units and the signatures of employees in the three units. David B. Hart (Hart) of SMCS determined that the total number of signatures was not sufficient to meet the 30 percent requirement to get an election in the three combined units addressed by the petitions. Teamsters took the position that it would have had a sufficient showing for an election if the extra help employees were not counted as members of the unit. CSEA's position was that, in addition to not meeting the 30 percent requirement in a combined single unit, the two petitions were invalid because they did not identify the particular unit to which the individual signatures were intended to apply but, instead, commingled the signatures and units as if the three units were a single unit.

9. The County reviewed the written objections of both CSEA and Teamsters, and it determined that the technical deficiencies in the petitions should not preclude an election if a sufficient number of employee signatures in each of the three units were totaled and the total in one or more units met the 30 percent requirement. The County then divided the employees by unit and counted the signatures of those employees in each unit. As a result, there was a 30 percent showing in one unit, the Crafts, Labor and Trades Unit. The County ordered an election in that unit stating that the election would determine the choice of the employees in that unit. Teamsters notified the County that it would go forward with the election in that unit

and reserved its right to challenge the appropriateness of including extra help employees as members of the unit.

10. On March 2, 1998, an election was requested by the County in the Crafts, Labor and Trades Unit to be held by the SMCS.

11. On March 31, 1998, the parties held a pre-election meeting with State Mediator, Tom McCarthy (McCarthy), regarding the election in the Crafts, Labor and Trades Unit. In attendance for CSEA were CSEA Organizer, Tony Fernandez (Fernandez) and Labor Relations Representative, Ben Bustamante (Bustamante). In attendance for Teamsters were David Acuna (Acuna) and Jack Ross (Ross). The County's Attorney, C. Anne Hudson (Hudson), attended along with then- County Director of Personnel Services, Hoyl E. Belt (Belt), and his Secretary, Josie Heath. The purpose of the meeting was to determine the specifics of the election in accordance with the County's election rules. At the meeting, the parties discussed and agreed that the minimum participation rule applied and was a prerequisite to a valid election.

12. The 1998 election was conducted by a mail-in ballot. On May 4, 1998, the parties met to count the ballots received. Those present were Mediator McCarthy, Bustamante for CSEA, Ross and Acuna for the Teamsters, and Hudson and Belt for the County. The mediator announced that he had received 35 ballots plus one invalid ballot. He stated to those present that because 50 percent plus one, or 75 ballots were not received, the election in the Crafts, Labor and Trades Unit was invalid under the County's rules, and the ballots would not be counted. He stated that he would dispose of the ballots and notify the County. CSEA remained the exclusive representative of the Crafts, Labor and Trades Unit, as well as the Clerical and Technical Units.

13. Teamsters did not challenge the results of the 1998 election or the inclusion of extra help employees in the unit. (Nine documents consisting of correspondence between the parties related to the 1998 election were submitted as Exhibit B to the stipulation.)

14. The local press reported the results of this 1998 election. (A copy of an article regarding the election which appeared in the Imperial Valley Press on May 5, 1998 was submitted as Exhibit C to the stipulation.)

15. In about 2000, the County and the representatives of all of its bargaining units, including the three units currently represented by CSEA agreed that extra-help, seasonal, special assignment, substitute, and temporary employees identified in Section VII of the EER Policy should be excluded from the bargaining units, and that the 1981 EER Policy should be amended to reflect this change. The 1981 EER Policy was amended in about 2000, in part, to reflect these agreements. (A copy of the current EER Policy in effect since approximately 2000 to the present time was submitted as Exhibit D to the stipulation.)

16. Rule X(f) of the County's current EER Policy (Rule X(f)) provides (inter alia) that: "No such election shall result in the designation of an exclusive representative unless at least a majority of the employees in a unit eligible to vote in the election actually vote in such election." This provision has remained unchanged since 1981.

17. Rule X(c) of the current EER Policy provides that petitions for exclusive representation and/or decertification may be filed only during the month of January of any calendar year; that decertification of an exclusive representative does not require the negotiation of a new memorandum of understanding (MOU); and that any MOU in effect shall remain in force until its expiration and will be binding on any subsequently recognized employee organization or exclusive representative.

18. The term of the currently in effect MOU between the County and CSEA for all three bargaining units at issue in the unfair practice charge and complaint is July 1, 2004 through June 30, 2007. (The MOU was submitted as Exhibit E to the stipulation.)

19. The current MOU contains a reopener provision for the 2006-2007 year for health and welfare, wages, and an additional current or new article at the discretion of either party. The parties must submit their reopener proposals by September l, 2006. CSEA is currently formulating its proposals to submit to the County. If the County decides to make proposals to CSEA, it will also be formulating its proposals to submit to CSEA.

20. In January 2006, the Teamsters filed petitions seeking the decertification of CSEA and the certification of Teamsters in the three bargaining units CSEA represents in Imperial County: Technical Unit; Clerical Unit; and Crafts, Labor, Trades Unit. Throughout the decertification election campaign in these three units, CSEA, the Teamsters, and the County were aware of the County's minimum participation rule and, until May 22, 2006, all understood and agreed that if less than a majority of workers voted in each unit, then the election in that unit would be invalid; and that an invalid election would result in CSEA remaining the exclusive representative of workers in the unit.

21. During the campaign, the Teamsters distributed flyers to the eligible voters in all three bargaining units which referred to the minimum participation rule. These flyers were also posted on bulletin boards at all work sites of workers in the three units. One such flyer is two-sided and states, in part, that "under the rules of the County Employee/Employer Relations Policy A MAJORITY OF WORKERS FROM EACH GROUP MUST VOTE IN ORDER FOR THE ELECTION TO BE VALID." The flyer went on to state the total number of eligible employees in each unit and the number of votes needed in each unit. (A copy of the flyer was

submitted as Exhibit F to the stipulation.) A separate one-sided flyer, printed on bright yellow card stock also states, in part: "Under the rules of the County Employee/Employer Relations Policy A MAJORITY OF WORKERS FROM EACH GROUP MUST VOTE IN ORDER FOR THE ELECTION TO BE VALID." (A copy of this flyer was submitted as Exhibit G to the stipulation.)

22. CSEA also distributed flyers to the eligible voters in all three bargaining units. (Copies of some of the CSEA flyers were submitted as Exhibit H to the stipulation.)

23. On or about February 15, 2006, representatives of the SMCS, the County, CSEA, and the Teamsters met to determine whether there was a sufficient showing of interest (30 percent) by the Teamsters and, if so, to discuss the election procedures to be used in the decertification election. Those present included Bustamante on behalf of CSEA; Acuna and Phil Farias (Farias) for the Teamsters; Hudson and Dan DeVoy (DeVoy) for the County; and Hart, and Michele Keith (Keith) of SMCS. At that meeting, Bustamante stated that a majority of the employees in the three units must vote in order to have a valid election under the County policy. He read from his copy of the County EER Policy and directed the parties to the minimum participation rule in that portion of Rule X(£) quoted above. There were no objections or statements made at that meeting to the effect that the minimum participation rule in subdivision (i) was invalid or in any way inappropriate or illegal.

24. On or about March 13, 2006, at another meeting of the parties to discuss election procedures: Bustamante, Kevin Nash, Erik Olson, Fernandez, and Annette Hughes were present for CSEA; Acuna and Farias were present for the Teamsters; DeVoy was present for the County; and Keith was present for SMCS. At that meeting, the MOU for the Representation Election to be conducted through the United States mail was signed. There was

no discussion of the minimum participation requirement and no objection made to the minimum participation requirement.

25. The Teamsters protested by letter dated May 22, 2006, the minimum participation requirement for a valid election in the EER Policy stating that it was in violation of MMBA section 3507.l. (A copy of the letter was submitted as Exhibit I to the stipulation.)

26. The SMCS conducted a mail ballot decertification/certification election in the three bargaining units. The ballots were mailed with return postage prepaid on or about April 27, 2006. Ballots had to be received by 5 p.m. on May 22, 2006.

27. On May 24, 2006, the parties met with State Mediator Keith to count the ballots. Keith counted the number of ballots received in each unit separately before opening them. Each time she announced the number of ballots received in each of the three units, CSEA Representative Fernandez stated that she should not open the ballots for that unit due to the fact that an insufficient number of workers had voted. Despite his objection she opened and counted the ballots in each unit.

28. On May 24, 2006, Director of Field Operations for CSEA, Steve Fraga (Fraga), wrote to DeVoy requesting the election be declared null and void. (A copy of the letter was submitted as Exhibit J to the stipulation.)

29. On May 24, 2006, Fraga wrote Keith of SMCS requesting that she rescind the election results and declare the election null and void. (A copy of the letter was submitted as Exhibit K to the stipulation.)

30. On May 25, 2006, Fraga sent a follow-up letter to Keith. (A copy of this letter was submitted as Exhibit L to the stipulation.)

31. On May 26, 2006, Fern M. Steiner (Steiner), attorney for the Teamsters, wrote DeVoy requesting Teamsters be certified as the exclusive representative for the three bargaining units. (A copy of the letter was submitted as Exhibit M to the stipulation.)

32. On May 26, 2006, Steiner wrote Keith requesting that the ballots and the Teamsters be certified. (A copy of the letter was submitted as Exhibit N to the stipulation.)

33. On June 6, 2006, Director of Human Resources and Risk Management, DeVoy, declared the elections to be invalid because a majority of the employees eligible to vote in each unit did not vote in the election.[7] (A copy of the letter was submitted as Exhibit 0 to the stipulation.)

34. Results of the election in the Clerical Unit are: 292 ballots mailed (number of eligible voters); 108 of these ballots received; number of valid ballots 108; 24 votes for CSEA; 70 votes for Teamsters; and l4 votes for no representation. (A copy of the results from the SMCS was submitted as Exhibit P to the stipulation.)

35. Results of the election in the Technical Unit are: 361 ballots mailed (number of eligible voters); l10 of these ballots received; one challenged ballot challenge upheld; number of valid ballots l09; 19 votes for CSEA; 70 votes for the Teamsters; and 20 votes for no representation. (A copy of the results from the SMCS was submitted as Exhibit Q to the stipulation.)

36. Results of the election in the Crafts, Labor, Trades Unit from the SMCS are: l l8 ballots mailed (number of eligible voters); 53 ballots received; one challenged ballot challenge

[7]This conduct by the County is also alleged as unlawful.

upheld; number of valid ballots 52; 20 votes for CSEA; 31 votes for Teamsters; and one vote for no representation. (A copy of the results from the SMCS was submitted as Exhibit R to the stipulation.)

37. Pursuant to Article 2, section 2.2 of the County's current MOU with CSEA regarding the three units voting in the elections, extra-help, seasonal, special assignment, substitute, and temporary employees identified in Section VII of the EER Policy were not included in these units or included in the number of employees eligible to vote in the Clerical, Technical, and Crafts, Labor and Trades Units.

38. No previous unfair practice charges have been filed against the County, and no litigation has been previously filed against the County in any forum at any time alleging that a rule in its current or preceding EER Policies was invalid or that the County violated any of its local rules.

39. A copy of an abstract of a compilation of the published and file documents available regarding the legislative deliberations and amendments that resulted in the enactment of Senate Bill 739, along with an index and declaration authenticating the documents in the fie, was submitted as Exhibit S to the stipulation.[8]

40. There are currently fourteen (14) represented bargaining units of County employees with which the County regularly meets and confers for MOUs. These units include a total of l,500 employees. CSEA is the exclusive representative of 77l of these employees in the three units it represents.

[8]Senate Bill 739, which granted PERB jurisdiction over the MMBA, added, among others, Government Code section 3507.1, the MMBA provision under consideration herein.

41. As of the date of the parties' stipulation, the County is aware that the following counties have EER Policies which include a minimum participation rule, the same as that of the County, in addition to the requirement that a majority of the votes cast in an election will determine the exclusive representative. These counties are: Tuolumne; San Joaquin; and Colusa County.

ISSUES

1. Does Rule X(f) unlawfully conflict with the MMBA?

2. Did the County unlawfully interfere with employee rights by implementing Rule X(f) in June 2006 to invalidate three representation elections?

3. If a violation is found, what is the appropriate remedy?

DISCUSSION

This case involves the interplay between Rule X(f) and section 3507.l (a) of the MMBA. MMBA section 3507.1(a) provides:

> Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a public agency in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required. (Emphasis added.)

Rule X(f), entitled "Election Procedures", states, in part:

> Whenever an election is required pursuant to this provision, the County Clerk shall authorize a secret ballot election in accordance with standard procedures and regulations and, pursuant to the provisions of this section, shall issue instructions for the conduct of the election.
>
> The County Clerk shall declare the results of such elections. No such election shall result in the designation of an exclusive representative unless at least a majority of the employees in a unit eligible to vote in the election actually vote in such election. The

> Personnel Director shall then either (1) certify as the exclusive employee organization of the representation unit the employee organization or the group of employees receiving the largest number of votes cast at the election for an exclusive representative, or (2) declare that no organization or group is the exclusive representative because less than a majority of the employees in the unit actually voted in the election. (Emphasis added.)

Standard of Review

The MMBA allows a considerable degree of local regulation, but where it sets a standard, local divergence is not allowed. (International Federation of Prof. & Technical Engineers v. City and County of San Francisco (2000) 79 Cal.App 4th 1300 (94 Cal.Rptr.2d 790) (San Francisco).) As explained by the California Supreme Court:

> (I)t is now well settled that the Legislature intended that the MMBA 'set forth reasonable, proper and necessary principles which public agencies must follow in their rules and regulations for administering their employer-employee relations. .. .' and that 'if the rules and regulations of a public agency do not meet the standard established by the Legislature, the deficiencies of those rules and regulations as to rights, duties and obligations of the employer, the employee, and the employee organization, are supplied by the appropriate provisions of the act.' (Citations omitted). (International Brotherhood of Electrical Workers v. City of Gridley (1983) 34 Ca1.3d 19l (l93 Cal.Rptr. 5l8) (City of Gridley).)

Thus, when looking at a disputed rule, the inquiry does not concern whether PERB would find a different rule more reasonable. Rather, the question is whether a disputed rule is consistent with and effectuates the purposes of the express provisions of the MMBA. (City of Gridley; Huntington Beach Police Officers' Assn. v. City of Huntington Beach (1976) 58 Cal.App.3d 492 (129 Cal.Rptr. 893). As explained by the San Francisco court, the standards established by the MMBA "may not be undercut by contradictory rules or procedures that would frustrate its purposes." (San Francisco, at p. l306.)

Here, the standard established by MMBA section 3507.1 (a) calls for a majority of votes cast, and further requires representation elections to be determined and processed "in accordance with this chapter." In contrast, Rule X(f) establishes a 50 percent minimum participation level in order to validate the election. Thus, the question in this case is whether Rule X(f) either frustrates or effectuates the purposes of the MMBA. For the reasons set forth below, we conclude that Section X(£) frustrates the purposes of the MMBA and is therefore unreasonable.

Statutory Construction

It is a maxim of statutory construction that if the language of a statute is clear and unambiguous, then the intent of the Legislature is reflected in the plain meaning of the statute. (Barstow Unified School District (1996) PERB Decision No. 1138; North Orange County Regional Occupational Program (l990) PERB Decision No. 857.) We find the language of MMBA section 3507.l (a) is clear and unambiguous on its face. Namely, the statute merely states that a majority of votes cast in representation elections is required, and not that a majority of employees must vote.

In contrast to MMBA section 3507.l (a), section 3502.5(d), which governs MMBA rescission elections, expressly requires a majority of unit employees to vote in order to rescind an agency shop provision. Such a majority participation level is also required for rescission elections under other statutes administered by PERB.[9] Clearly, by enacting MMBA section 3502.5(d), the Legislature demonstrated an awareness of the difference between a majority of eligible voters and a majority of votes cast. Therefore, since majority participation

[9]E.g., Ralph C. Dills Act (Dills Act) section 3515.7(d); Educational Employer-Employee Relations Act (EERA) section 3546(d); Higher Education Employer-Employee Relations Act (HEERA) section 3583.5(c).

is specifically required elsewhere in the MMBA, we find its absence in Section 3507.1 (a) compelling evidence that the Legislature did not intend to extend a majority participation rule to representation elections.

In this case, the Teamsters received the majority of votes cast. Thus, pursuant to MMBA section 3507.l (a), the Teamsters should have been certified as the exclusive representative. The County, however, applied Rule X(f) and invalidated the election. In so doing, the County invalidated an election that was otherwise valid under MMBA section 3507.1 (a). Under these circumstances, we conclude Rule X(f) clearly frustrates the purposes of the MMBA.

It should be noted that the National Labor Relations Board (NLRB) has consistently held that representation is to be determined based on a majority of ballots cast, even where voter turnout is low. (NLRB v. Standard Lime & Stone Co. (1945) l49 F.2d 435 (16 LRRM 669) (election valid where only 40 percent of employees voted); Regal 8 Inn (1976) 222 NLRB 1258 (91 LRRM 1480) (6 out of 13 employees voted); NLRB v. Central Dispensary & Emergency Hospital (1944) l45 F.2d 852 (l5 LRRM 643) and NLRB v. Whittier Mils Co. (l940) I I I F.2d 474 (6 LRRM 799) (majority of employees need not vote to certify election). Thus, the standard applied by NLRB in representation elections is consistent with our interpretation of MMBA section 3507.1 (a),[10]

[10]Although it is not bound by decisions of the NLRB, the Board will take cognizance of NLRB precedent where appropriate, as an aid in interpreting identical or analogous provisions of the statutes. (Carlsbad Unified School District (1979) PERB Decision No. 89.)

For these reasons, we conclude the 50 percent participation rule set forth of Rule X(f) is contradictory to, and prohibited by, MMBA section 3507.I (a), and therefore, unreasonable. Accordingly, we find the County's application of Rule X(£) is unlawful. (PERB Reg. 32603(f).)

Interference

The test for whether a respondent has interfered with the rights of employees under the MMBA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The courts have described the standard as follows:

> All (a charging party) must prove to establish an interference violation of section 3506 is: (l) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons. (Public Employees Assn. v. Board of Supervisors of Tulare County (1985) 167 Cal.App.3d 797, 807 (213 Cal.Rptr 49l).)

In this case, the employees participated in a representation election. In so doing, the parties engaged is a protected activity. Consequently, the first element of the interference test is satisfied.

With regard to the second element, the County contends that "there is no evidence that Respondent interfered with employee choice ... or that the rule in fact discouraged employees in any way from voting." In Clovis Unified School District (1984) PERB Decision No. 389 (Clovis), the Board held that a finding of coercion rests on an objective standard and does not require evidence that employees actually felt threatened or intimidated or were in fact discouraged from participating in protected activity. In an election setting, the test is "whether the employer's conduct would reasonably tend to coerce or interfere with employee choice."

(Manton Joint Union Elementary School District (1992) PERB Decision No. 960 (Manton).) Thus, the County's contention regarding the lack of evidence of actual coercion is not determinative.

In this case, the County invalidated an election based on an unlawful local rule. In so doing, it wrongfully deprived the employees of their right to select an exclusive representative of their choosing. Therefore, because the County's conduct tended to interfere with the employees in the exercise of their protected rights, we find the second element of the interference test is satisfied.

With regard to the third element, all the parties in this case acknowledge that Rule X(f) was a long-standing, well known, policy that was the product of collective negotiations. However, as indicated above, the County's wrongful application of Rule X(f) effectively disenfranchised the employees in the bargaining units in question. Clearly, the right of employees to select the exclusive representative of their own choosing is a fundamental protection afforded by the MMBA. Thus, notwithstanding the historical background of Rule X(f), we find the County's conduct was not justified by any legitimate business reasons. We, therefore, find the third and final element of interference test is satisfied. Because all three elements have been met, we conclude the County engaged in unlawful interference in violation of the MMBA when it applied Rule X(f).

Vote Results

Since we determined that Rule X(£) violates the MMBA, the remaining issue in this case is whether to uphold the election results and certify the Teamsters as the exclusive

representative or set the election aside. Indeed, on appeal, CSEA's arguments focused exclusively on this issue.[11]

One of the Board's fundamental responsibilities is to ensure the fairness and integrity of elections. (San Diego Unified School District (1996) PERB Decision No. Ad-278.) However, "an election need not be perfect to be valid. Mistakes are made in any human endeavor. The question is whether the mistakes were sufficient to affect the outcome" of the election. (State of California (Departments of Personnel Administration, Developmental Services, and Mental Health) (l986) PERB Decision No. 60l).

In determining whether to set aside an election, the Board looks at whether the employer's unfair practices establish a "probable impact on the employees' vote." (Chula Vista Elementary School District (2004) PERB Decision No. l647; Jefferson Elementary School District (l98l) PERB Decision No. l64.) The question in such cases is "whether the employer's conduct would reasonably tend to coerce or interfere with employee choice." (Manton.) Actual impact need not be shown. (San Ramon Valley Unified School District (1979) PERB Decision No. l l l; (Clovis).)

As discussed above, the County's implementation of Rule X(f) on July 26, 2006, violated the MMBA. However, there were no allegations raised by any party regarding an irregularity in voting, misconduct in running the election or any conduct that could be considered coercive or otherwise objectionable. Moreover, we found no evidence in the record that the County's application of the 50 percent participation rule interfered with employee choice. Consequently, we find the rule did not tend to discourage employees from voting and,

[11] CSEA did not appeal the ALJ's finding that the 50 percent participation rule was unreasonable.

therefore, did not tend to impact the tally of ballots. For these reasons, we conclude there is no compelling reason to invalidate the elections at issue herein.

In each of the three affected units, Teamsters received a majority of votes cast as required by MMBA section 3507.1 (a). Accordingly, we hold that it is appropriate to certify Teamsters as the exclusive representative in these three units.

CONCLUSION

The 50 percent participation rule set forth of Rule X(f) is contradictory to, and prohibited by, MMBA section 3507.1 (a), and therefore, unreasonable. In addition, the County's application of the 50 percent participation rule constituted interference in violation of MMBA section 3506. Accordingly, the rule must be invalidated. Last, we find the application of the 50 percent participation rule did not tend to impact employee choice in the elections in the Clerical, Technical, and Crafts/Labor/Trades bargaining units held from April 27, 2006 to May 22, 2006. Consequently, we find the elections were valid and conclude it is appropriate to certify the Teamsters as the exclusive representative of employees in those units.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the County of Imperial (County) violated the Meyers-Milias-Brown Act (MMBA) section 3507.l(a) by enforcing the majority participation rule set forth in Section X, subdivision (f) of the County's Employer-Employee Relations Policy, a rule requiring that a majority of unit employees vote in a representation election for it to be valid (50 percent participation rule). The County also violated MMBA section 3506 by interfering with the rights of employees by implementing Rule X(i) in June 2006 to invalidate the results of elections in three bargaining units.

Pursuant to MMBA section 3509(b), it hereby is ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Maintaining the 50 percent participation rule of Rule X(f), which requires that a majority of unit employees cast their votes in order for a representation election to be valid.

2. Interfering with employee rights to select a representative of their own choosing by implementing the 50 percent participation rule of Rule X(f) to invalidate representation elections.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Within ten (l0) workdays following the service of a final decision in this matter, rescind the 50 percent participation rule of Rule X(f).

2. Within ten (10) workdays following the date this decision is no longer subject to appeal, validate the results of the representation elections in the Clerical, Technical, and Crafts/Labor/Trades bargaining units held from April 27, 2006 to May 22, 2006, and certify Teamsters Local 542 as the exclusive representative of the employees in those units.

3. Within ten (l0) workdays following the date this decision is no longer subject to appeal, post at all work locations where notices to employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board or the General Counsel's designee. The County shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on Teamsters Local 542 and California School Employees Association and its Imperial County Employees Chapter 2004.

Chairman Duncan and Member Shek joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a review in Unfair Practice Case No. LA-CE-293-M, Teamsters Local 542 v. County of Imperial/California School Employees Association and its Imperial County Employees Chapter 2004, in which all parties had the right to participate, it has been found that the County of Imperial (County) violated the Meyers-Milias-Brown Act (MMBA) sections 3506 and 3507.1(a), by enforcing the majority participation rule set forth in Rule X, subdivision (£) (Rule XC£)) of the County's Employer-Employee Relations Policy, a rule requiring that a majority of unit employees vote in a representation election for it to be valid, and by implementing that rule to invalidate three representation elections.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Maintaining the 50 percent participation rule of Rule X(f), which requires that a majority of unit employees cast their votes in order for a representation election to be valid.

2. Interfering with employee rights to select a representative of their own choosing by implementing the 50 percent participation rule of Rule X(£) to invalidate representation elections.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Rescind the 50 percent participation rule of Rule X(f).

2. Validate the results of the representation elections in the Clerical, Technical, and Crafts/Labor/Trades bargaining units held from April 27 to May 22, 2006, and certify Teamsters Local 542 as the exclusive representative of the employees in those units.

Dated: _____ COUNTY OF IMPERIAL

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.