

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CITY OF SALINAS,

Employer,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521,

Exclusive Representative.

Case No. SF-IM-185-M

PERB Decision No. Ad-457-M

January 4, 2018

Appearances: Weinberg, Roger, and Rosenfeld, by Kerianne R. Steele and Anthony J. Tucci, Attorneys, for Service Employees International Union Local 521.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on Service Employees International Union Local 521's (SEIU) appeal from an administrative determination by PERB's Office of the General Counsel. SEIU filed a request for factfinding, pursuant to section 3505.4 of the Meyers-Milias-Brown Act (MMBA)¹ and PERB Regulation² 32802, concerning a dispute with the City of Salinas (City) over appointments to a grievance board that adjudicates disciplinary matters for bargaining unit members. The Office of the General Counsel denied the factfinding request because it concluded there was no written notice of a declaration of impasse, as required by section 3505.4, subdivision (a).

¹ The MMBA is codified at Government Code section 3500 et seq. All further statutory references are to the Government Code.

² PERB Regulations are codified at California Code of Regulations, title 8, section 30001 et seq.

The Board has reviewed the record in this case and SEIU's appeal.³ For the reasons explained below, we find that there was a written notice of a declaration of impasse, and therefore grant the appeal, reverse the Office of the General Counsel's administrative determination and remand the matter to the Office of the General Counsel for further processing.

BACKGROUND

SEIU filed its factfinding request with PERB on June 16, 2017. For the date impasse was declared, SEIU wrote: "City falsely declared impasse on May 31, 2017 despite the City Council failing to send authorized representatives to the table." SEIU also included a cover letter for its request stating: "SEIU Local 521 is exercising its right to engage in factfinding although the City Council failed to send authorized representatives to the table. SEIU Local 521 does not agree that impasse exists. By making this factfinding demand, SEIU Local 521 in no way waives its allegation that the City Council bargained in bad faith with the Union."

Initially, the City did not dispute the sufficiency of SEIU's factfinding request, and the Office of the General Counsel sent a letter directing each party to identify its member of the factfinding panel and providing the names of potential neutral chairpersons for the panel. After receiving this letter, the City asserted that SEIU's request was insufficient because there was no written declaration of impasse.

The Office of the General Counsel then requested that SEIU provide a copy of the written notice of declaration of impasse. SEIU responded by providing a May 19, 2017 letter from the City, which stated in part:

The City has fulfilled its obligation under the MMBA in light of
[*Los Angeles County Civil Service Commission v. Superior Court*

³ The City did not file a response to the appeal.

(1978) 23 Cal.3d 55] by meeting and conferring on May 8, 2017 to discuss and possibly reach agreement regarding the grievance board appointments and the City Council’s consideration of Union recommendations to the vacancies on the Grievance Board.^[4]

[¶ . . . ¶]

. . . The City expects appointments to the vacant positions on the Grievance Board to be made at an upcoming City Council meeting. We will keep you apprised when the City has secured a date on the City Council’s agenda for these items.

SEIU also provided a copy of its May 24, 2017 letter in response, which asked, “since you now assert that ‘[t]he City has fulfilled its obligations under the MMBA . . . by meeting and conferring on May 8, 2017,’ is it your position that the City has declared impasse in those meet and confer discussions?”

SEIU also provided the Office of the General Counsel with a copy of the City’s May 31, 2017 letter, which responded to SEIU’s May 24 letter, but did not address SEIU’s inquiry about whether the City had declared impasse. Instead, the City reiterated that it intended to fill the vacancies on the grievance board.

After receiving these documents, the Office of the General Counsel advised the parties that it was denying SEIU’s factfinding request. In its subsequent administrative determination explaining the denial, the Office of the General Counsel explained that it “could not find a written declaration of impasse” in the correspondence provided by SEIU.

DISCUSSION

Both the MMBA and PERB Regulations require that if a bargaining dispute has not been submitted to mediation, a request for impasse must be made within 30 days “following the date that either party provided the other with a written notice of a declaration of impasse.”

⁴ SEIU’s response specifically directed the Office of the General Counsel’s attention to this part of the letter.

(§ 3505.4, subd. (a); PERB Regulation 32802, subd. (a)(2).) It necessarily follows from this requirement that a factfinding request is premature, and therefore invalid, if the dispute has not been submitted to mediation and neither party has provided written notice of a declaration of impasse. The question we must resolve is whether the City's May 19, 2017 letter constituted a written declaration of impasse.

The City's letter states that the City "has fulfilled its obligation under the MMBA . . . by meeting and conferring on May 8, 2017 to discuss and possibly reach agreement regarding the grievance board appointments," and that the City Council would soon be making appointments to the grievance board. In substance, these statements describe a bargaining impasse. "Under PERB and private-sector precedent, impasse exists 'where the parties have considered each other's proposals and counterproposals, attempted to narrow the gap of disagreement and have, nonetheless, reached a point in their negotiations where continued discussion would be futile.'" (*El Dorado County Superior Court* (2017) PERB Decision No. 2523-C, p. 8, quoting *County of Riverside* (2014) PERB Decision No. 2360-M, pp. 12-13.) A bona fide impasse suspends the obligation to meet and confer. (*Fresno County In-Home Supportive Services Public Authority* (2015) PERB Decision No. 2418-M, p. 22.) And following any applicable impasse resolution procedures, or in the absence of those procedures, the employer is legally privileged to impose terms and conditions of employment reasonably comprehended within its last, best, and final offer. (*Ibid; Riverside, supra*, p. 11.)

In view of the definition of impasse and its legal significance, the meaning and import of the City's statements are clear: the City believes it has fulfilled its obligation to meet and confer (which includes negotiating until agreement is reached, or until the point that continued negotiations would be futile), and will proceed with implementing its proposed actions. While

the City's letter would undoubtedly be clearer if it specifically used the word "impasse," we generally look to the substance of a party's words, not their form, to determine their legal effect. (See, e.g., *County of Sacramento* (2013) PERB Decision No. 2315-M, p. 5 ["In order to perfect a valid demand to bargain, the exclusive representative is not required to recite a formulaic phrase, but may express its request in any form that conveys its desire to meet and confer or negotiate about a matter within the scope of representation"]; *Anaheim Union High School District* (2016) PERB Decision No. 2504, p. 9 ["no magic words or particular term of art" required for a party to object to negotiations over a nonmandatory subject of bargaining]; *Capistrano Unified School District* (2015) PERB Decision No. 2440, p. 17 ["no magic words" required for an employee to request representation during an investigatory meeting].)

It is also significant that the City did not respond to SEIU's request for clarification of whether the City had declared impasse. PERB has consistently held that in a collective bargaining relationship, it is essential that a party seek clarification if it finds the other party's statements ambiguous. This principle has been applied to demands to bargain (*Bellflower Unified School District* (2014) PERB Decision No. 2385, pp. 7-8), bargaining proposals (*Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1984) PERB Decision No. 375, p. 9), and requests for information (*County of Sierra* (2007) PERB Decision No. 1915-M, pp. 2-3). Here, SEIU appropriately sought clarification of a potentially ambiguous declaration of impasse. The City's failure to clarify its earlier statements supports our conclusion that those statements constituted a written notice of declaration of impasse.

This conclusion is consistent with our recognition that the "principal purpose of factfinding" is "to assist the parties in reaching a voluntary and prompt resolution of their

differences and thereby promote ‘full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.’” (*Workforce Investment Board* (2014) PERB Order No. Ad-418-M, p. 33, footnote omitted, quoting section 3500, subd. (a); *County of Contra Costa* (2014) PERB Order Ad-410-M, p. 48.) It would be contrary to this purpose to conclude that an employer may avoid factfinding by artfully avoiding the word “impasse” while declaring that it has fulfilled its bargaining obligations and intends to proceed with implementing its proposals.

By this conclusion, we intend no departure from our cases holding that under the MMBA factfinding procedures, PERB does not determine the existence of an impasse (e.g., *Santa Cruz Central Fire Protection District* (2016) PERB Order No. Ad-436-M, p. 7), that the legislatively preferred method of resolving a party’s disagreement that a bona fide impasse exists is through an unfair practice charge, not a factfinding request (*City and County of San Francisco* (2014) PERB Order Ad-415-M, pp. 13-14), and that the MMBA provides a strict window period for requesting factfinding (*City & County of San Francisco* (2014) PERB Order No. Ad-419-M, pp. 16-17). We hold only that, on the facts of this case, the City’s statements constituted a written notice of a declaration of impasse.⁵

We emphasize that neither the Office of the General Counsel, nor the Board on appeal, is required to sift through documents provided by the exclusive representative in order to find a declaration of impasse. When presented with a dispute about whether there has been written notice of a declaration of impasse, the Office of the General Counsel may, as part of its investigation, require the requesting party to provide the written notice. Here, at the request of

⁵ By this decision we make no assessment of SEIU’s allegations that the impasse was not bona fide, leaving that issue to an unfair practice proceeding.

the Office of the General Counsel, SEIU provided the correspondence between the parties and pointed the Office of the General Counsel to the precise paragraph of the City's May 19, 2017 letter that we find to be a sufficiently clear written notice of a declaration of impasse.

Therefore, we conclude that SEIU's request for factfinding satisfies the requirements of section 3505.4 and PERB Regulation 32802, subdivision (a).

ORDER

The Office of the General Counsel's administrative determination is hereby REVERSED and the matter is REMANDED to the Office of the General Counsel for further processing pursuant to PERB Regulation 32804.

Chair Gregersen and Member Banks joined in this decision.