

PUBLIC EMPLOYMENT RELATIONS BOARD

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November 13, 2013

Jennifer M. Garten
California Department of Human Resources
1515 S Street, North Bldg., Suite 400
Sacramento, CA 95811-7258

Dear Ms. Garten:

Thank you for providing, on behalf of the California Department of Human Resources (CalHR), a comment concerning the emergency regulation text proposed by the Public Employment Relations Board (PERB or Board) for the implementation and administration of the In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA or Act).¹

PERB understands CalHR's position to be that IHSSEERA does not provide for the processing of an alleged violation of a rule or regulation adopted by the Statewide Authority as an unfair practice charge (UPC). Specifically, CalHR takes issue with proposed language included in the proposed amendment to PERB regulations 32602, subdivision (a), 32610, subdivision (g), and 32611, subdivision (e).²

Pursuant to Government Code section 110035.5, the regulations as proposed are deemed necessary to address an emergency. Pursuant to Government Code sections 3541.3(g) and 110015, the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the IHSSEERA.

Specifically, Government Code section 3541.3 authorizes PERB:

- (a) To determine in disputed cases, or otherwise approve, appropriate units.
- (b) To determine in disputed cases whether a particular item is within or without the scope of representation.
- (c) To arrange for and supervise representation elections that shall be conducted by means of secret ballot elections, and certify the results of the elections.

* * *

¹ IHSSEERA is codified at Title 23 of the Government Code, section 110000 et seq.

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

(g) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

Government Code section 110015 further provides that:

Included among the appropriate powers of the board are the powers to order elections, to conduct any election the board orders, to order unit modifications consistent with Section 110008, and to adopt rules.

In addition, Government Code section 110035.5 provides that:

(a) The board and the Statewide Authority may adopt emergency regulations to implement this title. The initial adoption, amendment, or repeal of the regulations authorized by this section is deemed to address an emergency[.]

Of particular import, Government Code section 110035 provides:

(a) The Statewide Authority may adopt reasonable rules and regulations for all of the following:

(1) Registering employee organizations.

(2) Determining the status of organizations and associations as employee organizations or bona fide associations.

(3) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

(4) **Any other matters that are necessary to carry out the purposes of this title.**

(b) The board shall establish procedures whereby recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.

(c) The Statewide Authority shall not unreasonably withhold recognition of employee organizations.

(d) Employees and employee organizations may challenge a rule or regulation of the Statewide Authority as a violation of this title. **This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive, of Section 3541.3.**

(Emphasis added.)

PERB recognizes that IHSSEERA, as drafted, does not precisely mirror the structure or language of the Meyers-Milias-Brown Act (MMBA).³ PERB further recognizes that the “local” rules and regulations adopted by the Counties and Public Authorities pursuant to the MMBA encompass a range of subjects that differ slightly from those the Statewide Authority is authorized to adopt pursuant to IHSSEERA section 110035. However, both IHSSEERA and the MMBA expressly provide for “employer’s rules” for the administration of employer-employee relations, and both contain expansive “catch-all” provisions for rules that the statutorily defined “employers” may adopt. (IHSSEERA, § 110035(a)(4); MMBA, §3507(a)(9).) Moreover, given the lineage of the parties ultimately impacted by the creation of the collective bargaining regime that is now embodied in IHSSEERA—born under the coverage of the MMBA, which authorizes the filing of a UPC over an alleged violation of a “local” rule—and the fact that Legislature, knowing full well the history of these statutes, did not include language that would preclude treatment of such allegations as unfair practices, it is reasonable to conclude that IHSSEERA also allows for the processing of alleged violations of rules adopted by the Statewide Authority as a UPC.

In sum, PERB sees no reason to believe the Legislature intended to discard any of the “unfair practice” provisions of the MMBA and its implementing regulations, under which the IHSS employers (i.e., the Public Authorities and Counties) and employees (IHSS providers) have been functioning for many years now. Based on the broad rulemaking authority granted to PERB as the expert labor relations agency with the exclusive initial jurisdiction to interpret and administer public sector labor laws, and the genesis of IHSSEERA, we believe the Act may reasonably be construed to include the right to file a UPC over an alleged violation of a rule or regulation adopted by the Statewide Authority.

Thank you very much for your participation in this emergency rulemaking process. We hope that you will continue to participate during the next stage of PERB’s rulemaking concerning IHSSEERA.

Sincerely,

Jonathan Levy
Regional Attorney

³ The MMBA is codified at Government Code section 3500 et seq.