Six-Month Statute Of Limitations For MMBA PERB Unfair Practices

By Alison A. Moller

The time limit within which all unfair practice charges must be filed was not defined when the legislature gave the Public Employment Relations Board ("PERB") exclusive jurisdiction over the Meyers-Millas-Brown Act ("MMBA") on July 1, 2001. In the absence of any statute of limitations, PERB imported the three-year limitation from the California Civil Code. In a major appellate court victory for MMBA management, the Coachella Valley Mosquito and Vector Control District ("District") established a six-month statute of limitations for all claims filed before PERB.¹

In this case, the District argued that the six-month statute of limitations found in the Educational Employment Relations Act ("EERA") also applied to all MMBA unfair practices charges filed with PERB. PERB and the union argued that a three-year statute of limitations from the Civil Code applied.

The court held that a six-month statute of limitations applies for all MMBA cases filed with PERB after July 1, 2001, based on the fact that the bargaining statutes PERB administers should be interpreted consistently. PERB's jurisdiction to issue unfair practice complaints under the EERA, the Dills Act, and the HEERA has always been subject to a six-month limitations period.

This decision will prohibit unions and employees from delaying filing unfair practices against MMBA agencies. As the court noted, a six-month statute of limitations promotes prompt resolution of public employment labor disputes.

n a major case expanding the scope-of-bargaining under the MMBA,1 a Court of Appeal determined that the City of Claremont was required to negotiate before adopting an anti-racial profiling policy.

The police union claimed the policy affected the terms and conditions of employment under the MMBA; thus the City was required to negotiate before implementation. The City refused, contending that because the policy directly affected police-community relations, it was a management right outside the scope of meeting and conferring. The court disagreed with the City.

Employers must bargain the negotiable effects of policy decisions.

The new policy adopted by the City provided that an officer must record the race and ethnicity of a driver for vehicle stops not resulting in an arrest or citation. A research team from outside the police department later analyzed this information. Previously, the officers had been required only to inform a police dispatcher of this information, and the information was not disclosed outside the department.

Although the court determined that the decision to implement the new racial profiling policy was a fundamental policy decision directly affecting the police department’s mission to serve the public, how the City implemented the policy was not a fundamental policy decision. Because the new policy directly affected officers’ job security, disciplinary action, and prospects for promotion, and the officers’ relations with the public, the City was required to negotiate on these items. The court contrasted this case to San Jose Peace Officers Association v. City of San Jose,2 where the Court of Appeal concluded that the City’s development of a use of force policy was one involving fundamental policy considerations. The San Jose court concluded that the policy change affected working conditions only indirectly, and that a regulation concerning the use of firearms related to the City’s constitutional police power. In contrast, the Claremont anti-profiling policy did not involve the use of force and directly affected officers’ job security.

Because the City flatly refused to meet and confer with the union before implementation, the court ordered the City to revoke the policy and to enter into the meet and confer process under the MMBA.

This case was first addressed in the trial court because PERB has no jurisdiction over bargaining issues involving peace officers. Nonetheless, the appellate court relied heavily on PERB decisions in deciding this MMBA scope-of-bargaining case.

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Zipper clauses may be used only as a shield, not a sword.
The City also claimed that the union waived the right to meet and confer based on the contract's zipper clause. The zipper clause was typical – providing that negotiations were completed and that neither party had a duty to meet and confer concerning matters raised or that could have been raised during the negotiations. The court found that this zipper clause could only prevent the City from being required to negotiate modifications to the agreement, but could not be interpreted to allow the City to act unilaterally on new terms and conditions. Because a union’s waiver of the statutory right to negotiate must be clear and unmistakable, the court determined that this zipper clause did not meet that standard for waiver.

The City also claimed waiver based on the fact that the union’s president had been a member of the advisory panel that advised the police commission on the proposed policy. Again, the court noted that a waiver of the duty to bargain must be clear and unmistakable, and that there was no evidence that the union and the City regarded the president’s seat on the advisory panel as a substitute for the process of meeting and conferring under the MMBA.

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2 San Jose Peace Officer’s Association v. City of San Jose (1978) 78 Cal.App.3d 935.