Irrigation District Appealed... And Got An Answer It Didn't Want

By William Kay

The Fresno Irrigation District appealed an unfavorable Administrative Law Judge's decision that the District committed several unfair practices when it changed the Union's access to an employee work location. The Fresno Irrigation District Employees Association (FIDEA) previously had access to the local maintenance room for Union meetings. The recently adopted local MMBA rules permitted Union use of District facilities if the meeting was outside normal work hours, and if the meeting did not interfere with District operations.

On August 21, 2001, the FIDEA voted to use Operating Engineers, Local 3, as a service provider. Shortly thereafter, the local agency wrote that it was rejecting Local 3's attempt to replace FIDEA as the official representative. When FIDEA requested to use the maintenance room for a meeting, the District denied the request in writing stating that the Union now has access to Local 3's meeting room. When the District CAO denied additional Union requests, the Union filed an unfair practice with PERB. Thereafter, the District stated in writing that it was willing to meet and confer with FIDEA, and for the first time raised the "security concerns stemming from the September 11, 2001, Twin Towers attack."

After a full hearing on the issues the ALJ decided that:

(1) the District violated the Union's right of access under the MMBA;

(2) the District unilaterally changed its policy on the meeting room without notice and opportunity to negotiate; and

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(3) the District discriminated against FIDEA when it exercised the right to affiliate with Local 3.

The District appealed. The PERB Board did not adopt the ALJ’s decision, but used the opportunity to issue its own decision that applies to all MMBA agencies. Below are the significant parts of the Board’s ruling.

The Agency Violated Its Own Local Rule.
PERB determined that the Agency’s long-standing practice prior to Local 3’s affiliation was to grant the use of the meeting room. Previously, the District never considered an alternative Union site as a factor; and the District never raised security as an issue in the several written denials to the Union. The 9/11 security issue was mentioned only after the Union filed the unfair practice charge. Therefore, the Agency violated its own rules regarding Union access.

The Union Was Not Required To Exhaust The Local Rule's Appeal Procedure Before Filing The Unfair Practice.
The District’s local rules required that all appeals went to the District Board of Directors. PERB rejected the District’s assertion that the Union had to exhaust local administrative remedies. Instead, PERB determined that its unfair practice procedures are the administrative remedies the Union is required to exhaust.

The Agency Violated The Duty To Bargain When It Changed The Access Rule.
Of substantial significance, PERB determined that “access by employee organizations to employee work locations is a subject within the scope of representation” under the MMBA. The change in the application of the District’s local rule constituted an unlawful unilateral change on a mandatory subject of bargaining.

The Agency Discriminated Against The Union.
PERB concluded that the employer discriminated against the Union because of the Union’s attempt to affiliate with Local 3. Applying the standard circumstantial factors, PERB found anti-union animus in the inconsistent reasons given for denying the use of the meeting room, and in the fact that the agency management allowed the general public into the same room to which the Union was denied access.

All in all, it was not a good day for the Fresno Irrigation District.

(Summary of Fresno Irrigation District Employees Association (2003) PERB Decision No. 1565-M)

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SIGNIFICANCE TO ALL MMBA AGENCIES

1. Applying its own interpretation, PERB determined that an agency violated its local MMBA rule.

2. An employee organization's access to employee work locations is a mandatory subject of meet-and-confer under the MMBA.

3. A union does not have to exhaust a local rules appeals process before filing a claim with PERB regarding the application of the rule. (Future question: Would PERB be required to defer the decision to the local agency process if the local rules included an appeal to arbitration?)

4. PERB specifically avoided deciding whether the MMBA implies a right of union access to work facilities. (Note: The EERA and the HEERA have specific statutory provisions granting unions the "right of access at reasonable times to areas in which employees work...." The MMBA only refers to the discretionary adoption of local rules that provide access.)