PERB Has Initial Jurisdiction Over MMBA Strike, Not Local Superior Court

By William F. Kay

Background

In a much-anticipated case, the California Court of Appeal recently decided that the City of San Jose must first go to PERB (“Public Employment Relations Board”) to enjoin a strike, not to the local superior court. Even though the city did not file a claim with PERB, the court ruled that PERB has initial exclusive jurisdiction over strikes involving employees covered by the MMBA.

When the union gave city officials a 72-hour notice that job actions would occur any time after the expiration of the MOU, the city sought to enjoin the pending strike in the local superior court. Of the 800 potential strikers, the city identified 67 as essential workers and sought to prohibit them from striking. The work stoppage never materialized.

The union filed an unfair practice with PERB claiming interference in the employees’ right to strike, and asserting that PERB, not the superior court, had exclusive jurisdiction over the matter. PERB itself intervened, also claiming initial jurisdiction.

The California League of Cities, the California State Association of Counties, and the County of Santa Clara all filed amicus curiae briefs on the city’s behalf.

Court Rejects City’s Primary Arguments

In determining that PERB had initial exclusive jurisdiction, the Court of Appeal rejected all of the City of San Jose’s primary arguments.

1. The local superior court does not have jurisdiction to enjoin public employee strikes.

Addressing the city’s primary contention, the Court of Appeal relied on two critical elements to determine that PERB has initial exclusive jurisdiction over MMBA strikes.
First, the California Supreme Court had previously granted PERB exclusive jurisdiction in cases involving school work stoppages. Second, the court cited the 2001 legislative amendment that brought the MMBA under PERB’s jurisdiction:

“But with the statutory changes that became effective in 2001, ‘what the Legislature did was to remove from the courts their initial jurisdiction over MMBA unfair practices charges.’” (Citation).

2. **PERB has jurisdiction even though the city did not allege any violation of the MMBA.**

The court disregarded the city’s claim that because the city did not file an unfair practice with PERB, PERB had no business interfering. Likewise, the court rejected the union’s similar claim that because the union filed an unfair practice charge with PERB, PERB must assert jurisdiction. Instead, the court relied on the California Supreme Court’s prior preemption doctrine – that PERB has jurisdiction over all activities arguably protected or prohibited by the MMBA.

The court then demonstrated how the threatened strike in this case involved activities that were arguably both protected and prohibited by the MMBA. Contrary to the city’s argument, the court determined that PERB had jurisdiction over activities that were either protected or prohibited by the MMBA, regardless of the forum in which the claim was originally filed.

3. **PERB’s remedies are adequate in this case, and the city is not excused from exhausting the administrative remedies.**

Contrary to the city’s argument, the court concluded that PERB’s remedies were at least equal to a superior court’s, and that PERB’s expertise and ability to fashion a statewide labor policy were favored over leaving that policy development to numerous superior courts.

Finally, the court decided that the city must exhaust its administrative remedies with PERB before going to superior court.

**Impact**

In a major departure for MMBA agencies, according to the California Court of Appeal, an employer must now first go to PERB to enjoin any form of work stoppage that may threaten public health or safety, rather than to the local superior court. PERB has initial exclusive jurisdiction over strike activities that may be either prohibited or protected by the MMBA.

According to existing PERB law, although not discussed in the Court of Appeal’s decision, PERB will first determine whether an unfair practice has been committed and whether issuing an injunction will further the MMBA’s purposes.
### IMPORTANT DATES

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| April 13-17, 2008       | NPELRA Annual Conference  
Clearwater Beach, Florida                                                      |
| August 2008 (TBA)       | Labor Academy III  
The Negotiations Process  
City of San Francisco  
San Francisco, California                                                   |
| September 19, 2008 (Fri)| Labor Academy V  
MMBA Under PERB Jurisdiction  
The Centre At Sycamore Plaza  
Lakewood, California                                                        |
| September 26, 2008 (Fri)| Labor Academy V  
MMBA Under PERB Jurisdiction  
Northern California Location TBA                                            |
| November 10, 2008 (Mon)| Labor Academy II  
The Arbitration Process  
Portola Plaza Hotel and Spa  
Two Portola Plaza  
Monterey, California                                                       |
| November 11, 2008 (Tue)| Labor Academy III  
The Negotiations Process  
Portola Plaza Hotel and Spa  
Two Portola Plaza  
Monterey, California                                                       |
| November 12-14, 2008    | CALPELRA 33rd Annual Conference  
Portola Plaza Hotel and Spa  
Two Portola Plaza  
Monterey, California                                                      |