PERB Decision Reminds Agencies Of Duty To Bargain When Implementing A Non-Negotiable Decision

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Public agencies attempting to meet reasonable fiscal deadlines while completing bargaining on the effects of a management decision are stuck between a rock and a hard place during this fiscal crisis. To reduce expenses, agencies need to implement a non-negotiable decision (such as a layoff or reduction in service) as soon as possible without waiting to complete bargaining on the impact of that decision on mandatory subjects (such as workload and safety).

But agencies also know the basic rule requires the employer to complete the bargaining on the effects before implementing the decision.

Recently, CALPELRA members have been asking: (1) if any exceptions to this basic rule apply during a fiscal crisis; and (2) when can agencies lawfully implement a non-negotiable decision before completing bargaining on the negotiable effects. In support of their argument that non-negotiable decisions can be implemented before completing the bargaining on the effects, CALPELRA members and friends point to PERB’s 1990 Compton Community College District\(^1\) decision.
For a long time, public employers have hoped PERB would expand an employers’ right to implement a non-negotiable decision before completing bargaining on the negotiable effects of that decision. In the Compton decision, PERB determined that a school district could implement the decision adopting the student calendar while continuing negotiations on the effects (teacher work calendar). This distinction had critical implications for employers faced with implementing a non-negotiable decision that has negotiable effects on mandatory subjects of bargaining.

PERB has not expanded the Compton decision and, depending upon the facts, PERB’s Compton decision may not control in all circumstances. In Poway Unified School District, PERB narrowed the circumstances under which a school district can implement a student calendar before completing negotiations on the placement of teacher work days and annual work calendar. Those narrower standards may apply if your agency fails to properly describe implementation of the decision before completing negotiations on the effects.

Deciding when the public employer may implement a non-negotiable decision involving negotiable effects is critical. The basic rule is that the employer must first complete the negotiations on the effects before implementing the decision. But there are several exceptions to this basic rule. One exception was found in the original Compton case. There the school district attempted to negotiate the teacher work calendar, but was unable to finish negotiations as the school year approached. The district adopted a temporary student attendance calendar (non-negotiable) while continuing to negotiate the teacher work calendar (negotiable). PERB supported the district’s right to implement under these exigent circumstances.

PERB’s Poway decision, however, narrowed the employer’s flexibility by determining that the school district acted unlawfully when it adopted the student calendar before completing the negotiations on the teacher calendar – even though the district specifically continued the bargaining on the teacher calendar and the school board acted out of declared business necessity.

PERB viewed the factual circumstances in Poway differently than those in Compton because of the way the agencies described their actions at the time of implementation. In Poway, PERB found that the school board intended in fact to
Implications for public agencies attempting to meet reasonable fiscal deadlines while completing negotiations on the effects of a management decision?

- First, remember the basic rule that an employer must complete the negotiations process over the identified effects before implementing the non-negotiable decision.

- Second, there are several narrow exceptions to the basic rule. One narrow exception is that the employer may implement the decision before completing the effects bargaining if there is an articulated reasonable and necessary basis for acting, as in Compton. Where possible, describe the agency’s implementation as “tentative” and “subject to negotiations over the effects” of the decision.

- Third, even within this narrow exception, an employer must continue to complete the good faith bargaining process on the effects, and must provide evidence that the implemented decision is tentative, subject to the completion of the effects negotiation, and alterable via that negotiations process.


also adopt the teacher calendar by citing the board official minutes that read, “[T]he students, parents, and teachers need in some degree to start planning their vacations and that they had delayed this decision long enough.” PERB also cited a post-adoptions district press release touting the adoption of the “school calendar.” Finally, PERB noted that in Compton, the student calendar tentatively adopted was a “proposed calendar,” and “was alterable via the negotiations process.” By contrast, PERB viewed the adoption of the student calendar in Poway as final, thus precluding meaningful negotiations on the placement of teacher work days. How the employer describes its actions—whether in budget documents, official minutes, background summaries, or press releases—greatly impacts PERB’s determination.
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