PERB Decides When Negotiations Must Revive After Unilateral Adoption

CCPOA Case Is Good Reminder Of Requirements To Revive Negotiations After Unilateral Adoption

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In a recent decision involving the California Correctional Peace Officers Association (CCPOA), PERB further defined the conditions under which a public employer must revive negotiations after the adoption of its last, best, and final offer (“LBFO”). Because of the substantial increase in unilateral impositions during the current economic crisis, many public employers are unprepared to deal with union requests to revive negotiations after unilateral implementation. Some public employers may not recall the well-established rule that post-implementation negotiations are revived when a negotiating party articulates “changed circumstances.” Until this CCPOA decision, few PERB decisions defined what constituted sufficiently “changed circumstances” requiring reopening of negotiations; this decision helps to fill some gaps.

Background

In July 2006, the California Department of Personnel Administration’s (DPA’s) MOU with the CCPOA expired. Fourteen months later the DPA unilaterally adopted and implemented its LBFO, which included a small wage increase and change in work rules. Soon after the DPA adopted and implemented its LBFO, the CCPOA asked to revive negotiations.
The CCPOA alleged that PERB’s issuance of an unfair practice complaint constituted “changed circumstances.” In addition, the CCPOA demanded that the DPA reinstate the status quo that existed before the implementation of the LBFO. The DPA refused to revive negotiations or to reinstate the status quo before the LBFO.

After the CCPOA requested revived negotiations and reinstatement of the status quo, the Governor declared a fiscal emergency based on the precipitous drop in state revenues.

Approximately one month later, the CCPOA again demanded to revive negotiations, but this time cited additional “changed circumstances,” including the likelihood that the Governor’s emergency declaration would not allow the approval of the wage increase that was unilaterally adopted; that reopening of negotiations would likely avoid a strike; and, that the DPA had withdrawn the second and third years of the implemented LBFO. Again the CCPOA demanded a restoration of the status quo prior to the unilateral adoption, and again the DPA declined to revive the negotiations.

**PERB Decision**

PERB first reaffirmed that “…an impasse does not terminate an employer’s duty to bargain. Rather, the obligation to bargain is suspended only until changed circumstances indicate that attempt to reach agreement is no longer futile.” Next, PERB supported the DPA’s assertion that the CCPOA did not articulate “changed circumstances” sufficient to lawfully revive negotiations.

PERB reaffirmed that “changed circumstances” must involve a concession in a bargaining position — a “willingness to compromise.” The Board did not find any of the reasons the CCPOA cited as a compromise. Instead, PERB determined the Governor’s declaration of emergency lessened rather than enhanced the chances of agreement. The fact that the legislature did not approve the wage increase portion of the LBFO did not increase the chances that the DPA would want to go back and undo the work rule concessions gained in trade for the wage increase that was not approved by the legislature. Finally, PERB decided that the union’s insistence on restoration of the pre-implementation status quo as a condition for reopening negotiations only served to drive the parties further apart.
Significance

First, with this case PERB has focused on a change in bargaining position, not on a change in conditions exterior to the bargaining. “Change in circumstances” must be connected to an articulated compromise in the bargaining posture. This decision helps narrow the factors that could be considered as a change in circumstances sufficient to revive negotiations.

This new emphasis does exclude changes in exterior circumstances underlying a bargaining position (for example, either a deterioration or improvement in revenue sources).6

Second, even though negotiations can be lawfully revived after implementation, that revival does not mean that the parties must proceed through the impasse procedure a second time.7 Also, revived negotiations can be deadlocked again if the “changed circumstances” do not result in an agreement.

Third, CALPELRA’s Academy 7, Impasse And Unilateral Adoption During Economic Crisis, covers the issue of the post-implementation revival of negotiations, and provides practice for the participants in deadlocking revived negotiations.

1 State of California (Department of Personnel Administration (2010) PERB Dec. No. 2102-S.
3 Issuance of a complaint is the step preceding an administrative hearing before an administrative law judge (“ALJ”).
4 State of California (Department of Personnel Administration (2010) PERB Dec. No. 2102-S.

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