PERB recently decided that the County of Santa Clara unlawfully failed to bargain over a proposed initiative to change the local charter regarding prevailing wages. This case involved key decisions on the scope of bargaining and an employer’s ability to unilaterally implement when faced with a deadline.

The issue began when several unions instituted a proposed ballot initiative that would require interest arbitration of negotiations on wages, hours, and terms and conditions of employment. In response to the unions’ initiative, the County of Santa Clara placed two proposed charter amendments on the ballot. One of the county’s ballot measures proposed substantial limitations regarding binding interest arbitration. The second measure proposed an amendment to the charter’s current calculation of prevailing wages used in the determining pay rates for county employees.

The county invited the affected unions to meet and confer on any impact the county’s alternative initiatives might have on mandatory subjects. The correctional peace officers’ union requested to meet, and the parties met four times. During the first meeting, county representatives were met with profanities and what the county described as “rowdiness.” In addition, the county thought the union delayed setting up meetings. But when asked whether he sought counterproposals from...
the union, the county representative testified that he was “soliciting feedback” and “gathering information” for the county board of supervisors. When faced with the legal deadline for placing the county’s initiatives on the ballot, the county did not declare impasse, but placed the items on the ballot. Both the union and county initiatives failed in the November election.

**Scope Of Bargaining Issue**

PERB first determined that the county’s initiative amending the charter’s prevailing wage rate was a mandatory subject of bargaining, distinguishing a prior court of appeal ruling involving the City of Fresno’s wage rate charter amendment. In the Fresno case, the charter wage rate only established a minimum wage, or what would be the employer’s initial offer. Because the County of Santa Clara’s prevailing wage initiative established the wage rate, rather than the minimum rate, the initiative involved mandatory subjects. Under prior MMBA law, the county was required to negotiate over the terms of any initiative effecting wages, hours, and terms and conditions of employment.

On the other hand, PERB found that the county was not required to negotiate over the interest arbitration initiative because that matter was outside the scope of bargaining.

**County’s Failure To Declare Impasse Constituted Bad Faith**

PERB determined that because the county ceased bargaining without declaring impasse, it failed to complete the bargaining process.

**County Not Excused From Bargaining Because Of Ballot Deadline, Union Delay, Or Business Necessity**

Of greater importance, PERB decided that the county was not excused from bargaining the initiative because of the ballot deadline, the union’s delay tactics, or because of the county’s alleged business necessity.

PERB determined that the deadline for placing the measure on the ballot did not excuse the county from completing the bargaining process. Unlike PERB’s prior decision that an immutable deadline for layoffs excuses an employer’s duty to complete bargaining before implementation, PERB found that the county did not meet the test of “an imminent need to act” based on the ballot measure deadline.

In addition, PERB did not excuse the county from completing bargaining on the basis of the union’s alleged behavior and dilatory tactic. PERB noted that such behavior does not constitute an automatic waiver of a union’s right to bargain, and that an employer cannot resort to “self help” but should instead file an unfair practice charge with PERB regarding the union’s behavior.
Finally, PERB rejected the county’s claim that business necessity compelled the county to act. Unfortunately, PERB found that the county did not provide facts to support its claim, stating that, “the mere fact that the county thought inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation.”

**Repeat Lessons From CALPELRA Academy 6 And Academy 7**

This case underscores some of the key lessons from Academies 6 and 7: In today’s economic climate, a public employer can unilaterally adopt, but it must pay careful attention to detail. The good faith duty extends through impasse and revival. The duty to bargain can be waived by union inaction. Deadlines for completing negotiations must have a significant and provable impact on the employer’s operation before the deadline will excuse further bargaining. And business necessity must be a demonstrated “financial emergency which leaves no real alternative to the action taken and allows no time for meaningful negotiations before taking action.”


---

**2010 Annual Training Conference**

Put on your platform shoes and get ready to hustle back to 1975 as we celebrate CALPELRA’s 35th anniversary this November 16-19. Together we’re looking back, moving forward, and stayin’ alive!

The 2010 Annual Conference Program Committee has finalized the 2010 Annual Conference program. The 2010 Conference program is now available on our [Website](#). Program sessions include…

- De-Mystifying The Interactive Process
- Bargaining Your Way Through 2011’s Continuing Economic Crisis
- Health Care Reform And Practical Implications For Public Agencies
- Raising The Bar On Employee Accountability
- Furloughs And Layoffs
- Legally Reducing Overtime Expenditures
- Negotiating Pension Benefits, Retiree Medical, And Vested Rights

[Registration Now Open](#)
Current Academy Schedule

June 22, 2010
Labor Relations Academy 1
The Foundation Of Labor Relations
CarrAmerica Conference Center,
4400 Rosewood Drive, Pleasanton, California 94588

July 13, 2010
SPECIAL! Combined One Day Event
Labor Relations Academy 6: Bargaining Your Way Through Economic Crisis
AND
Labor Relations Academy 7: Impasse And Unilateral Adoption During Economic Crisis
Visalia Convention Center
303 E. Acequia, Visalia, California 93291

September 14, 2010
Labor Relations Academy 2
The Arbitration Process
Centre at Sycamore Plaza
5000 Clark Avenue, Lakewood, California 90712

November 15, 2010
NEW! Labor Relations Academy 6
Bargaining Your Way Through Economic Crisis
Monterey Marriott Hotel
350 Calle Principal, Monterey, California 93940

November 16, 2010
NEW! Labor Relations Academy 7
Impasse And Unilateral Adoption During Economic Crisis
Monterey Marriott Hotel
350 Calle Principal, Monterey, California 93940

Learn more about all of CALPELRA’s Academies and register on-line at CALPELRA’s Web site.