California Right To Privacy Trumps MMBA And PERB Decisions About Releasing Employee Addresses To Union

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Under California’s constitutional right to privacy, agency fee payers have a reasonable expectation of privacy that their personal information will remain confidential. Before a public employer may disclose the personal information of an agency fee payer to a union, the employer must give the agency fee payer notice and an opportunity to object.

Background Story

The Service Employees International Union, Local 721 represented several bargaining units in the County of Los Angeles. The memorandum of understanding between the county and SEIU contained an agency-shop agreement. In order to collect its agency fees, SEIU sent an annual Hudson notices to all employees. Historically, the union prepared the Hudson notice, the county prepared the mailing labels, and the county’s employee relations commission mailed the notices. Using this process the union did not have access to the addresses of agency fee payers.

During negotiations in 2006, SEIU proposed to change the Hudson notice process and to give SEIU the names and home addresses of the agency fee payers in the bargaining unit. The county rejected SEIU’s proposal, and SEIU filed an unfair practice charge with the commission.
Following a hearing, the commission found that agency fee payers’ personal information was presumptively relevant to SEIU’s representation and therefore the union had a right to the information. The commission rejected the county’s argument that disclosing agency fee payers’ personal information would violate their privacy rights. Although the commission acknowledged that privacy interests were at stake, it relied on NLRB and PERB precedent\(^4\) to find that the interests of the union outweighed the interests of agency fee payers.

In reviewing the commission’s decision, the Court of Appeal acknowledged that federal and state labor law recognizes that employee home address information is information necessary to the collective bargaining process.\(^5\) But the court held that these authorities do not control over California’s constitutional right to privacy.

The Court of Appeal stated:

“We reject the Union’s contention that based upon *Golden Empire Transit*, *supra*, PERB Decision No. 1704-M, at pages 7-8, the Union is entitled to personal information even over objection. *Golden Empire Transit* was not decided under California law. Instead, the Board relied on labor law holding this information is presumptively relevant. Since this is the wrong test, we also reject the Union’s reliance on additional authority not decided under California law.”

Because the court based its decision on the right to privacy under the California Constitution, this decision essentially overturns PERB’s *Golden Empire Transit* decision for all of California’s public employers. The California Constitution supersedes or trumps the MMBA and all the other labor relation statutes governing public employers. In other words, if the California Constitution requires an opt-out procedure before disclosing employee addresses to a union, any contrary decisional law by PERB is overruled.

bold Impact

California employers who have provided employee addresses to unions in the past must consider implementing a notice and opt-out system before disclosing employee addresses in the future.


2. *County of Los Angeles v. Los Angeles County Employee Relations Commission* (December 14, 2010, B217668). [Decision available here.](#)

3. Although Los Angeles County is covered by the MMBA, the county is expressly exempted from PERB. For that reason, an unfair practice charge involving the county goes to the county’s employee relations commission and not to PERB.

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