Some attendees at CALPELRA’s recent Labor Relations Academies 6 and 7 expressed doubt about a central point in the training – that a public employer can unilaterally decide to lay off or reduce staff, provided the employer is available to negotiate over identified effects on mandatory subjects.

Yesterday the California Supreme Court rebuffed a union challenge to this concept. The union contended that PERB’s initial decision – that the City of Richmond was not required to negotiate the decision to lay off firefighters – was incorrect. In its key holding, the Court declared:

"We now reaffirm this rule. Under the MMBA, a local public entity that is faced with a decline in revenues or other financial adversity may unilaterally decide to lay off some of its employees to reduce its labor costs. In this situation, a public employer must, however, give its employees an opportunity to bargain over the implementation of the decision, including the number of employees to be laid off, and the timing of the layoffs, as well as the effects of the layoffs on the workload and safety of the remaining employees."

The union contended that PERB’s initial dismissal of the union’s unfair practice charge was invalid. The union argued that the city was required to negotiate over the layoff decision, if that decision affected the workload and safety of the remaining firefighters. The Supreme
Court upheld PERB’s initial determination not to issue an unfair practice charge where the union demanded to bargain both the decision and the effects.

The Supreme Court’s decision also reaffirmed the well-established balancing test when interpreting the extent to which a management prerogative is subject to the meet and confer process. That is, a court or PERB must determine “if the employer’s need for the unencumbered decisionmaking in managing its operation is outweighed by the benefit to employer-employee relations of bargaining about the action in question.” In a general review of the balancing test cases, the Court reiterated the differences between layoffs resulting from an employer’s decision to transfer bargaining unit work to managers or an independent contractor (bargainable), versus layoffs motivated by profitability independent of labor costs or a shut down of a part of the business (not bargainable), and layoffs motivated by labor costs (not bargainable).

**Impact On Your Labor Relations**

This Supreme Court decision will not impact your labor relations if your agency has been adhering to current court and PERB decisions in this area. But this decision is important, because it turns back a union’s attempt to require management to meet and confer regarding the decision to lay off staff before the employing authority makes that decision.

Although this case was decided under the MMBA, it applies equally to all the statutes under PERB jurisdictions — EERA, HEERA, the Dills Act, and the Trial Court Acts — because they all have similar tests for determining the scope of bargaining.

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1. *International Association of Firefighters, Local 188, AFL-CIO v. Public Employment Relations Board (City of Richmond)* (January 24, 2011, Case No. S172377). (Decision available here.)