PERB ordered the City of Davis to rescind its unilaterally imposed 12 furlough days. PERB confirmed the ALJ’s decision that by unlawfully canceling the factfinding hearing, the City failed to bargain in good faith. The unanimous PERB decision ordered the City to reinstate the status quo ante by: (1) submitting the issues at impasse to a factfinding panel; and (2) paying retroactive pay with interest for 12 furlough days per year.

Factual Background

The negotiations leading to the dispute began in April 2009 about an MOU that would expire in July 2009. After eight months of negotiations, the City declared impasse and made a last, best, and final offer (“LBFO”) requiring the bargaining unit members to take 12 furlough days during the remainder of the 2009-10 fiscal year. The union membership rejected the LBFO.

According to the City’s local impasse rules, the parties must agree to submit the impasse dispute to the Council or, in the absence of an agreement, proceed to mediation. If the dispute is unresolved after mediation, the parties must participate in advisory factfinding before a neutral arbitrator.

1 City of Davis (2012) PERB Dec. No. 2271-M
After unsuccessfully participating in mediation during January 2010, the City asked the union to vote a second time on the LBFO. Again, the union members rejected the City’s offer.

In late February 2010, the City asked the union to waive its right to factfinding and submit the LBFO to the Council for action. The union responded by insisting on the factfinding process, and forwarding a list of five acceptable arbitrators to serve as the factfinding neutral chair.

Instead of responding to the union’s list of arbitrators, and without notice to the union, the City obtained a separate list from the State Mediation Service. For a couple of months, the parties disagreed on dates for a factfinding hearing, the number of days to schedule, and the formality of the process. Frustrated by the dispute over scheduling the factfinding, the City decided that the union’s dispute over hearing dates constituted delay tactics. Even though the parties had eventually agreed to a hearing date, the City canceled the factfinding on the basis that the union’s dilatory tactics had effectively waived factfinding. The City Council unilaterally adopted the LBFO.

**PERB Rejects City’s Contentions On Appeal**

The City contended that by engaging in dilatory tactics, the union effectively waived the right to factfinding. The City also argued it was not guilty of bargaining in bad faith based on the totality of circumstances. In rejecting the City’s arguments, the Board found that:

- The union did not unreasonably delay the process, but, even if the union had delayed the process, the City was not entitled to unilaterally cancel the factfinding process; and
- The City’s unilateral cancellation of the factfinding hearing constituted a *per se* violation of the MMBA. The City incorrectly analyzed its actions under the totality of circumstances test.
Lessons Learned

The City of Davis’ factfinding process was a product of a local rule established before enactment of AB 646. Agencies covered by statutory factfinding, however, can learn from this PERB decision. CALPELRA’s Labor Relations Academies 7 and 9 stress the following lessons illustrated by this City of Davis decision:

1. When negotiating for cost reductions, avoid actions that might demonstrate failure to negotiate in good faith. PERB’s standard remedy, restoration of the status quo with back pay, more than offsets the entire projected budget savings.

2. Agencies cannot unilaterally use “self-help” even if the union is delaying the process. According to this PERB decision, the City should have participated in the factfinding process and filed an unfair complaint with PERB about the union’s dilatory behavior.

3. The duty to bargain in good faith continues into and throughout the impasse process, including mediation and factfinding.

4. To avoid scheduling delays, agencies should seek to identify potential factfinding dates as part of the parties’ initial negotiations ground rules.