

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



UNION OF AMERICAN PHYSICIANS AND  
DENTISTS,

Charging Party,

v.

COUNTY OF VENTURA,

Respondent.

UNFAIR PRACTICE  
CASE NO. LA-CE-615-M

PROPOSED DECISION  
(August 24, 2011)

Appearances: Lawrence Rosenzweig, Attorney, for Union of American Physicians and Dentists; Matthew A. Smith, Assistant County Counsel, for County of Ventura.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case a union alleges that a public employer refused to bargain, in violation of the Meyers-Milias-Brown Act (MMBA).<sup>1</sup> The employer denies any violation.

The Union of American Physicians and Dentists (UAPD) filed an unfair practice charge against the County of Ventura (County) on June 29, 2010. The Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint against the County on July 30, 2010. The County filed an answer to the PERB complaint on August 23, 2010.

PERB held an informal settlement conference on August 17, 2010, but the case was not settled. PERB held a formal hearing on November 30, 2010. With the receipt of the last post-hearing briefs on February 4, 2011, the case was submitted for decision.

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<sup>1</sup> The MMBA is codified at Government Code section 3500 et seq.

## FINDINGS OF FACT

The County is a public agency under MMBA section 3501(c) and PERB Regulation 32016(a).<sup>2</sup> UAPD is a recognized employee organization under MMBA section 3501(b) and an exclusive representative under PERB Regulation 32016(b).

Since at least 1992, the County has had Personnel Rules and Regulations (PR&Rs) that govern employer-employee relations. Section 2009 of the PR&Rs provides that an employee organization may seek acknowledgement by the County as a recognized employee organization by filing certain documents with the County's Director-Human Resources (DHR). Section 2009 further provides:

- I. Upon receipt of the aforesaid documents from an employee organization, the Director-Human Resources shall within 30 days establish a unit or units based upon the criteria as set forth in Section 2008 of this Article and shall issue a certificate to the employee organization a copy of which shall be filed with the Board [of Supervisors], setting forth such unit or units, provided that verification of the proof submitted established that a majority of the employees involved have designated such employee organization to represent them.
- J. If the applying employee organization or any other employee organization desires to [protest] the determination of the Director-Human Resources, it shall within 10 days file its protest with the Director-Human Resources, requesting a review by the [Civil Service] Commission. The Director-Human Resources may request review upon his own motion.
- K. The Commission may sustain, modify or reverse the unit determination of the Director-Human Resources. It may then conduct an election in accordance with the rules and procedures of the State Conciliation Service and certify the results therein, or the matter may be returned to the Director-Human Resources for appropriate action.

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<sup>2</sup> PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

- L. The unit or units thus certified may not be protested, modified or decertified until the expiration of one year from the date of the certification.

Similar to Section 2009, paragraph L, Section 2012 provides in part:

- A. If a representation unit has been established, that unit shall not be contested for at least one year from the date of determination.

Thus, under the PR&Rs, representation units may not be modified or contested for one year after their determination.

On February 23, 2010, program management analyst James A. Dembowski (Dembowski) sent a letter on behalf of the DHR to the Civil Service Commission (Commission), stating in part:

- In October 2006, the Union of American Physicians and Dentists (UAPD) demanded that the County's Director of Human Resources (DHR) recognize it as the exclusive representative for all regularly employed full and part-time primary care physicians providers working at various clinics contracted with the Ventura County Healthcare Agency;
- The DHR refused to process the subject petition on his then-belief that said individuals were not County employees;
- The UAPD appealed the DHR's refusal to the California Public Employee [sic] Relations Board (PERB) which, in September 2009, ultimately held that the County was a "joint employer" and directed the DHR to process the October 2006 petition "...according to the County's local employer/employee relations rules"; [<sup>3</sup>]
- The DHR processed the petition in accord with Article 20 of the Personnel Rules and Regulations (PR&Rs) and found that while the UAPD had met most touchstones required of a petition demanding recognition, he could neither,
  - o Accurately determine an appropriate unit (as per Section 2109-H), nor,
  - o determine if the petition was supported by thirty percent (30%) of those in the yet-to-be-defined unit (as per Section 2109-G),

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<sup>3</sup> The PERB decision was *County of Ventura* (2009) PERB Decision No. 2067-M.

- because the UAPD had failed to submit any proof of such support, much less the 30% required by Section 2109-G;
- Due to the above, the DHR found the petition was deficient and he was therefore precluded from granting UAPD's demand;
  - On December 9, 2009, in accord with Section 2009-J of the PR&Rs, the DHR forwarded the matter ("processed the petition") to your Commission with his recommendation that you, too, follow/apply your own rules and deny the petition;
  - At the January 28, 2010 business meeting of your Commission, you considered and rejected the recommendation of the DHR and instead, ordered that the DHR accept and review a package of "authorization cards" the UAPD offered to the DHR for the first time to thereby possibly perfect its deficient 2006 petition; and,
  - At the end of the January 28, 2010 business meeting, the UAPD gave the DHR's representative a package of forty-three (43) signed authorization cards.

This was a fair summary of the events up to that point, from the County's point of view.

Dembowski's letter of February 23, 2010, concluded:

In accord with Sections 2008 & 2009 of the PR&Rs  
and Section 3507.1(c) of the Meyers-Milias-Brown Act,  
the Union of American Physicians and Dentists (UAPD) is  
hereby recognized as the  
"exclusive bargaining representative" for the above-defined  
"Satellite Clinic Physicians Bargaining Unit."

In light of the foregoing, there does not appear to be any need for further action by your Commission.

The minutes of the Commission's subsequent meeting on February 25, 2010, stated in part:

Present were Jim Dembowski (IR) and Mr. Rosenzweig, counsel for the union. The Commission received the Human Resource Director's correspondence dated February 23, 2010, indicating that the unit has been certified. Mr. Rosenzweig agreed to dismiss the Union's pending petition before the Commission and accept the County's certificate of recognition. The Commission voted unanimously, upon motion by Commissioner Becker, seconded by Commissioner Little, to relinquish jurisdiction over the matter and receive and file the County's correspondence dated February 23, 2010.

UAPD and the Commission apparently believed that the dispute with the County had been resolved.

UAPD subsequently requested bargaining with the County, and a session was scheduled for May 5, 2010. UAPD sent Dembowski an e-mail on April 26, 2010, stating in part:

Could you please confirm the location and time for the bargaining session on May 5th. I do not have the address or time. Plus please make sure that our physicians are released from their shifts. I believe we have 3 physicians participating in negotiations on the 5th.

Dr. Steven Barr  
Dr. Pam Holbrook  
Dr. Becky Wade

Dembowski replied by e-mail the same day, stating in part:

Unfortunately neither I, nor in fact the County, can cause Drs. Barr, Holbrook and/or Wade to be released from their duties by their respective clinic operator(s)/employer(s). Further, as indicated in previous e-mails, it is thought to be wholly inappropriate for the County to even attempt to interfere with such an aspect of that/those employment relationship(s). Should the listed Doctors desire to attend the subject session, it is suggested that they (the individual Doctors) speak with their respective clinic operator(s)/employer(s) to attempt to arrange their schedules for that day in a manner that might accomplish that desire.

The County never attempted even to request that employees be released for bargaining.

The parties nonetheless met for bargaining on May 5, May 25, June 8, and June 15, 2010. At hearing, UAPD staff representative David Trujillo (Trujillo) was examined and testified in part as follows:

Q . . . During these negotiating sessions, did the County take the position that there were issues they could not bargain about?

A They took that position. I had submitted an inquiry why they did not want to bargain over mandatory issues. And again, they refused, stating that it was, again, not part of their, under their authority to negotiate mandatory issues.

Q Okay. At these sessions, did the County identify which issues they would negotiate about and which issues they would not negotiate about?

A They didn't identify any issues whatsoever.

Trujillo expected the parties to meet again on July 29, 2010, but on July 27, 2010, Dembowski sent him a letter stating in part:

As you have acknowledged, these circumstances are, indeed, unique. Nevertheless, the County has maintained that it is not required to bargain any terms and conditions of employment over which the County does not have control and the County has never accepted the UAPD's assertion that PERB's ruling made the County a joint employer for all purposes and for all time.

While the County has met with UAPD, the County has also been assessing the current status and relevance of the "joint employer" ruling. PERB's decision left open the question of whether subsequent changes made in the County's contracts with the clinic operators would affect the County's current status as a joint employer of the clinic physicians. In fact, the County does not have control over the terms and conditions of the clinic physicians' employment. The physicians are employed by the corporations that operate the clinics. Control over the terms and conditions of employment rests with those entities.

Accordingly, it is the County's position that it is not a joint employer of the clinic physicians and has no duty or authority to bargain with UAPD over the terms and conditions of the Clinics' physicians' employment. Thus, the County will not meet further with UAPD and will not bargain over the wages, hours, terms and other conditions of employment applicable to the physicians employed by the independent clinic owner/operators.

The parties did not meet again.

## ISSUE

Did the County unlawfully refuse to bargain with UAPD?

## CONCLUSIONS OF LAW

MMBA section 3507.1(c) states in part:

A public agency shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit.

In Dembowski's letter to the Commission on February 23, 2010, the County specifically granted UAPD recognition under this section.

MMBA section 3505 states:

The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet and confer in good faith" means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.

MMBA section 3505.3 states:

Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the public agency on matters within the scope of representation.

In granting UAPD recognition under MMBA section 3507.1(c), the County accepted the obligations imposed by MMBA sections 3505 and 3505.3.

There can be no doubt that in Dembowski's letter of July 27, 2010, the County ultimately refused to bargain with UAPD. In its post-hearing briefs, the County argues that by then it had ceased to be an employer of the employees in question. At hearing, the County asserted that it ceased to be their employer in May 2007. The County seems to ignore (1) that it recognized UAPD as the exclusive bargaining representative of the satellite clinic physicians bargaining unit on February 23, 2010, and (2) that under its own PR&Rs no one could contest the representation unit for one year. The County makes no mention of these facts in either of its post-hearing briefs.

To allow the County to argue that in 2010 it did not employ the employees in question would be to allow the County to violate its own PR&Rs. Under MMBA section 3509(b), PERB has a mandatory duty "to enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections." For that reason, I refused at hearing to entertain evidence offered in violation of the County's PR&Rs. For the same reason, I refuse to entertain an argument offered in violation of the County's PR&Rs.

I conclude that the County's refusal to bargain with UAPD violated MMBA section 3505. Because this conduct denied UAPD its right to represent employees, and



interfered with the rights of employees to be represented, it also violated MMBA sections 3503 and 3506.

### REMEDY

MMBA section 3509(b) states in part:

The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board.

In the present case, the County has been found to have violated the MMBA by refusing to bargain with UAPD. It is therefore appropriate to order the County to cease and desist from this refusal and to bargain with UAPD.

Because the County's specific refusal even to request that employees be released for bargaining was part of its larger refusal to bargain, it is also appropriate to order the County to cease and desist from this specific refusal and to request that employees be released for bargaining.

In refusing to bargain with UAPD, the County effectively refused to recognize UAPD as the exclusive bargaining representative of the satellite clinic physicians bargaining unit. This refusal denied UAPD its right under the PR&Rs to an uncontested representation unit for at least one year. It is therefore appropriate to order the County to cease and desist from this refusal and to recognize UAPD as the exclusive bargaining representative of the satellite clinic physicians bargaining unit for at least one year from the date on which this decision becomes final.

It is also appropriate to order the County to post a notice incorporating the terms of the order in this case. (*Placerville Union School District (1978) PERB Decision No. 69.*)

UAPD argues that the County should also be ordered to pay UAPD's attorney's fees and costs. PERB will award such fees and costs when a party's conduct is "without arguable merit" and taken in "bad faith." (*City of Alhambra* (2009) PERB Decision No. 2037-M.) The two-prong test is satisfied in this case. The County's effort to contest UAPD's representation of the satellite clinic physicians bargaining unit was without arguable merit because it was in direct violation of the County's PR&Rs. In its post-hearing briefs, the County does not even attempt to argue otherwise.

As to the other prong of the two-prong test, the County's bad faith dates back to Dembowski's letter of February 23, 2010, purporting to recognize UAPD as the exclusive representative of the satellite clinic physicians bargaining unit. The letter was a sham, because the County's real position was that the representation unit did not exist as a unit of County employees. The real function of the letter apparently was to persuade UAPD and the Commission that "there does not appear to be any need for further action" by the Commission. In this, the letter was successful: UAPD agreed to dismiss its petition before the Commission, and the Commission voted to relinquish jurisdiction over the matter. As a result, the County did not have to present its real position to the Commission, and UAPD has ultimately had to litigate the matter before PERB. It is entirely appropriate that the County bear the costs of the litigation brought about by its bad faith. As in *City of Alhambra, supra*, PERB Decision No. 2037-M, such costs and fees will be awarded in an amount established by a statement, submitted by declaration and submitted to the County by UAPD, subject to review by PERB.

#### PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the County of Ventura (County) violated the Meyers-Milias-Brown Act

(Act), Government Code section 3500 et seq., by refusing to bargain with the Union of American Physicians and Dentists (UAPD).

Pursuant to section 3509(b) of the Government Code, it hereby is ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to bargain with UAPD.
2. Refusing to request that employee representatives of UAPD be allowed reasonable release time for bargaining.
3. Refusing to recognize UAPD as the exclusive bargaining representative of the satellite clinic physicians bargaining unit.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Bargain with UAPD.
2. Request that employee representatives of UAPD be allowed reasonable release time for bargaining.
3. Recognize UAPD as the exclusive bargaining representative of the satellite clinic physicians bargaining unit for at least one year from the date on which this decision becomes final, and thereafter unless and until UAPD is decertified or the unit is modified under the County's Personnel Rules and Regulations.
4. Pay UAPD reasonable attorney's fees and costs.
5. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the County customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that it will comply with the terms of this Order.

Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

6. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on UAPD.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95811-4124  
(916) 322-8231  
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the

U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Thomas J. Allen  
Administrative Law Judge

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California**



After a hearing in Unfair Practice Case No. LA-CE-615-M, *Union of American Physicians and Dentists v. County of Ventura*, in which all parties had the right to participate, it has been found that the County of Ventura violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq., by refusing to bargain with the Union of American Physicians and Dentists (UAPD).

As a result of this conduct, we have been ordered to post this Notice and we will:

**A. CEASE AND DESIST FROM:**

1. Refusing to bargain with UAPD.
2. Refusing to request that employee representatives of UAPD be allowed reasonable release time for bargaining.
3. Refusing to recognize UAPD as the exclusive bargaining representative of the satellite clinic physicians bargaining unit.

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:**

1. Bargain with UAPD.
2. Request that employee representatives of UAPD be allowed reasonable release time for bargaining.
3. Recognize UAPD as the exclusive bargaining representative of the satellite clinic physicians bargaining unit for at least one year from the date on which this decision becomes final, and thereafter unless and until UAPD is decertified or the unit is modified under the County's Personnel Rules and Regulations.
4. Pay UAPD reasonable attorney's fees and costs.

Dated: \_\_\_\_\_ COUNTY OF VENTURA

By: \_\_\_\_\_  
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.