



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

CALIFORNIA CITY POLICE OFFICERS
ASSOCIATION,

Charging Party,

v.

CITY OF CALIFORNIA CITY,

Respondent.

Case No. LA-CE-1668-M

PERB Decision No. 2944-M

February 26, 2025

Appearances: Ferrone Law Group by Brett Rutkowski, Attorney, for California City Police Officers Association; Buchalter, APC by Thomas O' Connell, Tricia Pham, and Michelle Brookfield, Attorneys; Burke, Williams & Sorenson by Alena Shamos and Victor M. Ponto, Attorneys, for City of California City.

Before Krantz, Paulson, and Krausse, Members.

DECISION¹

KRAUSSE, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Respondent City of California City to a proposed decision of an administrative law judge (ALJ). The complaint alleged that the City failed to follow disciplinary procedures when issuing Notices of Termination for three police officers represented by Charging Party California City Police Officers

¹ PERB Regulation 32320, subdivision (d) authorizes the Board to determine whether a decision, or any part thereof, shall be designated as non-precedential. Having considered the regulation's criteria, we designate this decision as non-precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

Association (Association), and in doing so violated the Meyers-Milias-Brown Act (MMBA) by unilaterally changing terms and conditions of employment without affording the Association advanced notice and an opportunity to bargain.²

After a formal hearing, the ALJ issued a proposed decision finding that the City violated the MMBA. The City filed exceptions asking us to reverse the proposed decision. Having reviewed the proposed decision, the entire record, and the parties' arguments, we reverse the proposed decision and dismiss the complaint and underlying charge.

FACTUAL AND PROCEDURAL BACKGROUND

Relevant Provisions

City Municipal Code Section 2-3.209 "Powers and Duties" provides, in part:

"The City Manager is the administrative head of the City under the direction and control of the Council. The City Manager is responsible for the efficient administration of the affairs of the City. In addition to general powers as administrative head, the City Manager shall have the following powers and duties:

[¶] . . . [¶]

"(c) To control, order, and give directions to heads of departments and subordinate officers and employees through the department heads;

"(d) To appoint, remove, promote, and demote any and all officers and employees of the City (with the exception of the City Treasurer who shall be elected, and the City Attorney who shall be appointed by Council), subject to applicable personnel rules and regulations"

² The MMBA is codified at Government Code section 3500 et seq.

The City and the Association are parties to a Memorandum of Understanding (MOU), effective February 23, 2022, through July 22, 2025. Article XXXII “Grievance Procedure” provides, in part:

“The City agrees to establish appeals procedure for Minor Discipline (any disciplinary procedure action from letters of reprimand up to three-day suspension) where an employee can appeal one level of supervision up from the one imposing the discipline. These procedures will include requirements of the employee to prove that the discipline is not consistent with the actions in question. The full procedures will be outlined in the Personnel Manual and will be applicable to all City employees.”

The City maintains its personnel rules and procedures in a Personnel Manual.

Section I of the Personnel Manual “Purpose and Applicability” provides, in part:

“This manual is intended to implement and supplement the Personnel Ordinance as set forth in the Municipal Code of the City of California City. Where the Personnel Manual and the MOU's Differ, the MOU Prevails.

[¶] . . . [¶]

“Departments may adopt Department Rules in order to supplement these rules [to] further clarify procedures within that department. Implementation of any Departmental Rules must have prior approval of the City Manager and be consistent with the Personnel Rules. In cases of conflict between these Personnel Rules and Department Rules, the Personnel Rules will prevail.”

At all relevant times, the City maintained the California City Police Department Policy Manual (Department Policy Manual). Policy 1008 “Personnel Complaints,”

Section 1008.10 “Post-Administrative Investigation Procedures” states, in part:

“Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through

the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

“1008.10.1 DIVISION COMMANDER RESPONSIBILITIES

“Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

“The Division Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

“Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

“When forwarding any written recommendation to the Chief of Police, the Division Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

“1008.10.2 CHIEF OF POLICE RESPONSIBILITIES

“Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

“Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that

should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a predisciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

“(a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.

“(b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.

“1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.

“2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

“Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.”³

³ *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 requires that permanent civil service employees be given notice of significant proposed disciplinary action, the reasons for the action, a copy of the charges and the materials upon which they are based, and an opportunity to respond to the charges either orally or in writing before discipline is imposed. (*Id.* at p. 215.) A “*Skelly* hearing” refers to the employee’s opportunity to respond to the charges and essentially results in a determination of whether there are reasonable grounds to believe the charges against the employee

Termination and Related Litigation

On September 14, 2019, California City Police Officers John Boston, Adrian Duque, and Leo Rodarte were involved in a use of force incident during an arrest. Following the incident, the City retained two investigative firms to investigate the circumstances of the arrest, and at the conclusion of the investigations, Police Chief Jon Walker issued a Notice of Termination to Boston, Duque, and Rodarte.

On February 5, 2021, the Association filed an unfair practice charge against the City, alleging that the City failed to follow disciplinary procedures when the Division Commander did not review the investigation and provide a recommendation regarding discipline. A PERB ALJ issued a proposed decision on October 21, 2021, finding that the City failed to timely file an answer, thereby admitting the facts of the dispute. The ALJ found that the City unilaterally changed its discipline policy and ordered the City to rescind the Notices of Termination. No party appealed the ALJ's decision and it later became final.

On November 5, 2021, the City reinstated the police officers and subsequently placed them on administrative leave while the Division Commander reviewed the investigations. On January 18, 2022, after considering the Division Commander's recommendations, Chief Walker issued each officer a Notice of Intent to Terminate. On February 2, 2022, the officers informed the City that they waived their *Skelly* rights and wished to proceed directly to an appeal of their terminations.

are true and support the proposed action. (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545-546.)

On June 7, 2022, two of the officers filed a lawsuit in state court, alleging that the City violated rights afforded by the Public Safety Officers Procedural Bill of Rights Act (POBRA).⁴ The court issued an injunction preventing the City from terminating the officers. On July 21, 2023, after a jury trial, the court rendered judgment for the City. On July 27, 2023, City Manager Igne Elmes issued each officer a Notice of Termination of Employment. The officers are currently pursuing their appeals through arbitration.

On September 6, 2023, the Association filed the instant unfair practice charge alleging that the City made an unlawful unilateral change to disciplinary procedures when the City Manager issued the Notices of Termination instead of the Chief of Police, as is prescribed in the Police Department Policy Manual. After a complaint issued, the ALJ held a formal hearing. At the hearing, two bargaining unit members who also served as union leaders testified that, in previous incidents involving potential officer discipline, the City followed the Department Policy Manual, and the Chief of Police always made the final decision with respect to discipline. After the record closed, the ALJ issued a proposed decision finding that the City violated the MMBA when it deviated from the Department Policy Manual by having the City Manager issue the officers' Notices of Termination.

DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.)

⁴ POBRA is codified at Government Code section 3300 et seq.

However, to the extent that a proposed decision has adequately addressed issues raised by certain exceptions, the Board need not further analyze those exceptions. (*ibid.*) The Board also need not address alleged errors that would not affect the outcome. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

To establish a prima facie case that a respondent employer made an unlawful unilateral change, a charging party union that exclusively represents a bargaining unit must prove: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9.)

Here, the City's exceptions assert multiple reasons to support its argument that we should reverse the ALJ's finding that the City violated the MMBA, including that the change at issue was not within the scope of representation. We evaluate this claim below and find that the proposed decision erred by finding that the change was within the scope of representation. On this basis, we reverse the proposed decision and decline to consider the other reasons advanced by the City for its reversal.

Scope of Representation

In deciding whether a matter falls within the "scope of representation" under the MMBA, the California Supreme Court has identified three distinct categories of

managerial decisions, each with its own implications for the scope of representation: (1) “decisions that ‘have only an indirect and attenuated impact on the employment relationship’ and thus are not mandatory subjects of bargaining,” such as advertising, product design, and financing; (2) “decisions directly defining the employment relationship, such as wages, workplace rules, and the order of succession of layoffs and recalls,” which are “always mandatory subjects of bargaining”; and (3) “decisions that directly affect employment, such as eliminating jobs, but nonetheless may not be mandatory subjects of bargaining because they involve ‘a change in the scope and direction of the enterprise’ or, in other words, the employer’s ‘retained freedom to manage its affairs unrelated to employment.’” (*International Assn. of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd.* (2011) 51 Cal.4th 259, 272-273 (*Richmond Firefighters*).)

Accordingly, the threshold issue is to determine which of the three categories described in *Richmond Firefighters* applies. (*City and County of San Francisco* (2022) PERB Decision No. 2846-M, pp. 17-18 (*San Francisco*).) Further analysis is needed only if a decision falls into the third category. In that instance, PERB first determines whether the decision has “a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees” that “arises from the implementation of a fundamental managerial or policy decision.” (*Id.* at p. 18, citing *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, 638.) If so, PERB must resolve whether “the employer’s need for unencumbered decision[-]making in managing its operations is outweighed by the benefit to employer-

employee relations of bargaining about the action in question.” (*San Francisco, supra*, PERB Decision No. 2846-M, p. 18.)

In the proposed decision, the ALJ followed *County of Sonoma* (2023) PERB Decision No. 2772a-M and found that the City’s decision to have the City Manager issue the Notices of Termination fell into the third *Richmond Firefighters* category. The ALJ next decided that the change was significant and adverse “because it changed the ultimate decision-maker empowered to terminate a City police officer[,]” and the change arose from the implementation of a fundamental management decision. Finally, the proposed decision weighed the employer’s decision-making authority against the benefit of bargaining and found the change was within the scope of representation.

We agree with the proposed decision that the change at issue falls into the third *Richmond Firefighters* category; however, we do not find that the change had a significant and adverse effect on wages, hours, or working conditions. Here, after the City issued the Notices of Intent to Terminate, the officers’ waiver of *Skelly* rights meant it was exceedingly likely that Notices of Termination would follow. Chief Walker evaluated the investigation and the Division Commander’s recommendations and issued the Notices of Intent to Terminate on January 18, 2022. When the officers waived *Skelly* rights, under Department Policy 1008.10.2(b)(2), there was no other information for the City to consider. A new Chief of Police or the City Manager’s issuance of the Notices of Termination does not alter the underlying determination already made by Chief Walker in the Notices of Intent to Terminate. Because the officers’ *Skelly* waiver left them without any pre-termination basis to challenge the

Notices of Intent to Terminate, we find the City's deviation from the Policy Manual did not have a significant and adverse effect on the officers' terms and conditions of employment in these unique circumstances.

Had the officers presented their claims in a *Skelly* hearing, our conclusion would likely change. There, the Chief of Police is required to "consider all information received in regard to the recommended discipline." In that circumstance, a reasonable police officer would view a deviation from the established *Skelly* procedures as significant and adverse to their terms and conditions of employment. (See *Long Beach Police Officer Assn. v. City of Long Beach* (1984) 156 Cal.App.3d 996, 1011.)

For the foregoing reasons, the Association has failed to demonstrate that the City's deviation from the Department Policy Manual had a significant and adverse impact on terms and conditions of employment and thereby has failed to prove that the City's change was within the scope of representation. We therefore reverse the proposed decision and find no violation of the MMBA.

ORDER

The complaint and underlying unfair practice charge in PERB Case No. LA-CE-1668-M are hereby DISMISSED.

Members Krantz and Paulson joined in this Decision.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Appeals Office, 1031 18th Street, Suite 223, Sacramento, CA, 95811-4124.

On February 26, 2025, I served PERB Decision No. 2944-M regarding *California City Police Officers Association v. City of California City*, Case No. LA-CE-1668-M on the parties listed below by

I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 26, 2025, at Sacramento, California.

Joseph Seisa
(Type or print name)


(Signature)