

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)

SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 721,)

Charging Party,)

vs.)

LOS ANGELES COUNTY CHIEF EXECUTIVE)
OFFICE,)

Respondent.)

UFC No. 006-25

DECISION AND ORDER

Background

This Decision and Order (“D&O”) arises out of an Unfair Practice Charge (“UFC”) filed by the Service Employees International Union, Local 721 (“Charging Party” or “SEIU”) against the Los Angeles County Chief Executive Office (“Respondent” or “CEO”) (collectively “Parties”) due to the main issue presented: the CEO’s refusal to pay wage differentials to SEIU bargaining team members who were provided release time for formal meeting and conferring, i.e., bargaining.

Specifically, on November 7 and 14, 2024, the parties traded proposals on ground rules in preparation for successor agreement negotiations. During that exchange, SEIU insisted that bargaining unit employees released for negotiations would receive their base wages and differentials. On November 14, 2024, the CEO’s office stated that the County would only pay base wages (without differentials) to released bargaining team members.

Subsequently, SEIU filed the instant UFC,¹ alleging that the CEO’s actions violate Section 3505.3 of the Meyers-Milias-Brown Act (“MMBA”), which states, in part, that:

Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without

¹ The amended, operative charge was filed on January 29, 2024.

loss of compensation or other benefits when they are participating in any one of the following activities:

- (1) Formally meeting and conferring with representatives of the public agency on matters within the scope of representation.

At this Commission's March 24, 2025 meeting, the CEO did not dispute the factual allegations but asserted that provisions in the various Memoranda of Understanding between the Parties and past practice supported its position that the County is only obligated to pay base wages for employees released for bargaining. There being no disputed issues of fact, the Commission proceeded to issue this D& O as a matter of law.

Decision

The Public Employment Relations Board ("PERB") has addressed the main issue presented twice in the past dozen years and has made clear that Section 3505.3 of the MMBA requires the paying of differentials when employees are released for purposes of formal meeting and conferring, i.e., bargaining.

It is well established that this Commission is bound to interpret the ERO in a manner that is consistent with PERB's interpretation of the MMBA. *See County of Los Angeles v. Los Angeles County Employee Relations Com. (2013) 56 Cal.4th 905, 917* (holding that "ERCOM must exercise its authority in a manner 'consistent with and pursuant to' the policies of the MMBA as interpreted and administered by PERB.")

In the first case (*SEIU Local 721 v. County of Riverside*, PERB Dec. No. 2307-M) (2013) ("County of Riverside 2013"), PERB noted that Section 3505.3 allows for a reasonable amount of time off for formal negotiations "without loss of compensation or other benefits," and held that this language "establishes a minimum statutory guarantee that is not negotiable" (*id* at p. 29). PERB held that "loss" must be measured "against the amount of pay the employee would have earned if the employee has not been formally meeting and conferring with representatives of the public agency," and that "to construe it otherwise would exact a penalty on employees for engaging in formal negotiations, and create a chilling effect on the exercise of protected employee rights, i.e., participation of organizational activities" (*id* at pp. 32-33). PERB, therefore, concluded that "reducing employees' pay from full wages to base wages when they are excused from their regular duties to engage in formal negotiations [would constitute] a loss of compensation" and would violate Section 3505.3 (*id* at p. 31).

In the second case (*SEIU Local 721 v. County of Riverside*, PERB Dec. No. 2573-M) (2018) ("County of Riverside 2018"), the County of Riverside asked PERB to overrule the 2013 decision, and argued, in part, that past practice should determine whether shift differentials are owed to employees released for bargaining. PERB rejected the County's argument and reaffirmed its decision that differentials must be paid when employees are released for formal bargaining, noting that a "statutory violation is not dependent on whether there is a past practice" (*id* at p. 27).

The CEO points to an earlier PERB decision (*San Mateo Federation of Teachers AFT Local 1493, AFL-CIO v. San Mateo Community College District*, PERB Dec. No. 1030 (1993) (“*San Mateo*”)² for the proposition that the parties may, through MOUs and/or past practice, agree to pay only base wages to employees who are released for formal bargaining.

As noted above, however, the past practice argument was rejected by PERB in *County of Riverside 2018*.

Besides, we do not read *San Mateo* as stating that parties may contract around a statutory right. Indeed, *San Mateo* did not deal with the question of shift differentials in the context of what constitutes “loss” of compensation. Rather, it dealt with the question of what constitutes a “reasonable number” of released employee representatives under EERA. Instead, PERB noted that release time is “both a mandatory subject of bargaining and a statutory right.” In discussing release time as a mandatory subject of bargaining, PERB was focused on the amount of release time to which a union was entitled and not on the question of which wages were owed for release time:

The Board does not believe that it was intended under EERA that employees would be accorded special privileges relative to released time; that is, be afforded the protection of bargaining the matter as a mandatory subject of bargaining and, regardless of the degree of good faith bargaining which occurs, be given the right to attack an agreement previously reached with the employer through the unfair practice process only because the quantity may not be equal to the average of surrounding jurisdictions or some other empirical standard.

(*San Mateo* at p. 16 (emphasis added)).

PERB concluded that when it comes to the quantity of release time, “[r]eleased time shall be in accordance with the memorandum of understanding” (*id* at p. 17).

But *County of Riverside 2013* made clear that this logic does not apply to the question of the amount of wages released employees should receive. There PERB distinguished the *San Mateo* case by noting that “the main issue addressed in the decisions under EERA concerns the reasonableness of the amount of time and the number of representatives released,” and that the question of reasonableness is subjective (*id* at p. 29). It then pointed out that the question of “lost” wages is objectively measurable:

The determination of the number of representatives to be released and the amount of released time to be provided is couched in terms of reasonableness whereas the determination of compensation and other benefits is not. The determination of reasonableness relative to the number of representatives and amount of time will necessarily vary depending on the factual circumstances of each case. In contrast,

² *San Mateo* is an EERA, not an MMBA, case, but the two cases interpret similar language and can be read in harmony.

the determination of “loss” of compensation or other benefits is measurable.

(*County of Riverside 2013*, at pp. 29-30.)

As noted above, PERB, in its *County of Riverside 2013* case, concluded that, as a matter of statute, employees released for formal meeting and conferring are entitled to objectively measured base wages and differentials, reasoning as follows:

The statutory purpose of released time is to ensure effective representation for employees in negotiations by lessening the burden on employee organizations whose effectiveness may be otherwise limited by time constraints. A policy that shifts costs onto employees by denying them the pay they would have received but for collective bargaining frustrates this purpose.

(*Id.* at p. 30.)

For the foregoing reasons, we find that the Respondent violated the MMBA and committed a UFC when it denied employees who were released for formal meeting and conferring, i.e. negotiations, their full wages inclusive of differentials.

Order

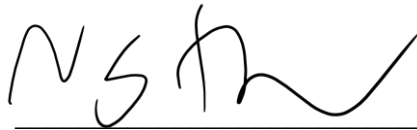
NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

- 1) Respondent shall make whole all bargaining unit members who were released for formal meeting and conferring and were not paid differential wages that they would have earned had they not been bargaining;
- 2) Respondent will cease and desist from failing to pay such differentials to employees released for purposes of formal meeting and conferring; and
- 3) Respondent will post appropriate notices – including but not necessarily limited to email notice to members of the employee representation units represented by SEIU Local 721 – regarding this Decision and Order; the notice shall include an explanation that employees released for purposes of formal meeting and conferring, i.e., negotiations, are entitled to their regular and usual differential pay amounts.

IT IS SO ORDERED.



Christopher David Ruiz Cameron, Chair



Najeeb Khoury, Commissioner



Patti Paniccia, Commissioner

Date: April 7, 2025