

THE ZAPPIA LAW FIRM

A PROFESSIONAL CORPORATION

— Labor & Employment Law —

SPECIAL UPDATE

PUBLIC SECTOR EMPLOYERS / LABOR LAW

November 19, 2013

Superior Court Rules That AB 646 Factfinding Procedures Are Not Applicable To Single Issue Meet and Confer Disputes: Ruling Limits AB 646 to Post-Impasse After Collective Bargaining For A New or Successor MOU Only.

In a case brought by our office on behalf of our client County of Riverside, the Riverside County Superior Court granted our claims for mandamus and declaratory relief, ruling that AB 646 post-impasse factfinding procedures apply only when requested by the union at impasse after collective bargaining for a successor MOU. Thus, AB 646 post-impasse factfinding procedures do NOT apply at “impasse” of single meet and confer issues which arise during the life of an MOU. (*County of Riverside v. PERB, SEIU, Local 721* (RSC Case No. RIC 1305661)) In our case, over the County’s objection, PERB ordered the County to proceed to AB 646 factfinding with SEIU over the effects of the County’s expanded background investigations for its I.T. personnel.

The Court Orders are as follows:

- 1. Commanding PERB to dismiss all pending AB 646 factfindings arising from single meet and confer issues and/or not arising from impasse following collective bargaining for a new or successor MOU; and*
- 2. Enjoin PERB from granting any future requests for AB 646 factfinding which arise from single meet and confer issues and/or do not arise from impasse following collective bargaining for a new or successor MOU; and*
- 3. Command and enjoin SEIU not to request any AB 646 factfinding arising from single meet and confer issues and/or which do not arise from impasse following collective bargaining for a new or successor MOU.*

We also moved the Court for an order deeming AB 646 post-impasse factfinding procedures unconstitutional entirely on the grounds that it interferes with a public entity’s right to control its’ employees’ compensation and money - without interference. The Court ruled that, while AB 646 factfinding procedures do interfere with the County’s right to impose its approved last, best, final offer at the time of impasse due to the mandatory stay and delay of unilateral imposition pending factfinding, this was not “sufficient” interference to deem it unconstitutional. The Superior Court invited an appeal of this issue, suggesting a published opinion may be needed to establish a “bright line rule” for what constitutes permissible vs. unconstitutional interference.

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Further, PERB sought anti-SLAPP sanctions against the County for simply exercising its Constitutional and statutory rights to appeal a PERB decision via a Writ Petition to Superior Court. PERB argued that the County's Complaint/Writ Petition "chilled" PERB's "protected activity" of issuing written decisions. In denying PERB's anti-SLAPP motion, the Court authorized the County to proceed on our cross-request for sanctions against PERB.

We anticipate cross-appeals on both issues.