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January 2, 2013

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BY HAND DELIVERY

Chief Justice Tani Cantil-Sakauye and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: New Authority Relevant to Supplemental Briefing on Arbitrability in *City of Los Angeles v. Sup. Ct. (Engineers & Architects Association)*, California Supreme Court, No. S192828

Dear Chief Justice Cantil-Sakauye and Associate Justices:

We represent Real Party in Interest Engineers & Architects Association ("EAA"). Pursuant to Rule of Court 8.520(d), we submit this letter brief and the attached recent decision of the California Public Employment Relations Board ("PERB"). That decision addressed a number of issues relevant to the arbitrability issues on which this Court requested supplemental briefing.[1]

In *International Assoc. of Machinists & Aerospace Workers v. City of Long Beach* (Dec. 4, 2012) PERB Decision 2296-M, PERB examined the city's unilateral imposition of furloughs on employees covered by a memorandum of understanding ("MOU") and the Meyers-Milias-Brown Act ("MMBA") and held that neither allowed furloughs.[2]

First, it held that furloughs are within an employer's duty to bargain under the MMBA. (See *id.* at p. 17 ["Both wages and hours are expressly included within the scope of representation under the MMBA. Thus, because

[1] PERB has the "primary responsibility . . . to determine the scope of the statutory duty to bargain and resolve charges of unfair refusal to bargain," and as such its decisions are entitled to great weight. (*Banning Teachers Assn. v. Public Employment Relations Bd.* (1988) 44 Cal.3d 799, 804.)

[2] The PERB decision is dated "December 4, 2012." However, because PERB did not publish the decision pursuant to its normal notification process, counsel for EAA were unaware of it until December 27, 2012. For this reason, this new PERB decision was not included in EAA's supplemental briefs requested by this Court.

the imposition of furloughs clearly affects both . . . it is within the scope of representation"].) That reasoning confirms EAA's similar argument. (See EAA's Suppl. Br. at 7-9; Answer to City's Suppl. Br. at 2-5.)

Second, PERB held that "lack of work or funds" language in an MOU did not authorize furloughs because it did not "expressly mention furloughs," and there was no evidence that language was "intended to include furloughs." (PERB Decision 2296-M at 17-18; *id.* at 18 ["we decline to interpret [that language] as authorizing the City to unilaterally implement furloughs"].) That holding also supports EAA's argument that similar language in the parties' MOUs should not be construed as allowing furloughs. (See EAA's Suppl. Br. at 16-18; Answer to City's Suppl. Br. at 2-3,12.)

Third, it held that furloughs were not authorized under the MOU's management rights clause. That was because the management rights clause's "general language authorizing the City to determine the size and composition of its workforce and to assign work" did not abrogate the union's bargaining rights. (See PERB Decision 2296-M at 21-22.) Additionally, PERB found that, on the facts before it, furloughs were not a "fundamental managerial or policy decision that falls outside the scope of representation" under the MMBA. (See *id.* at 22-23 ["We disagree that the City's decision to furlough employees was a fundamental management decision over with it did not have to bargain"].) PERB's reasoning further supports EAA's argument that furloughs are neither a generally-recognized management right nor permissible under the parties' management rights clause. (See EAA's Suppl. Br. at 4-9, 11-18; Answer to City's Suppl. Br. at 2-11.)

Finally, PERB rejected the city's argument that it had the same powers under the MMBA as did the Legislature under the Dills Act. (See *id.* at 25-26 ["Unlike the Dills Act, nothing in the MMBA vests ultimate authority with local governing bodies to use their legislative authority, through the budget approval process, to relieve covered employers from their bargaining obligations"].)

For all these reasons, PERB's decision that furloughs are not a management right provides useful guidance in this Court's determination whether furloughs are arbitrable under the parties' MOUs.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Gregg McLean Adam

Attachment: PERB Decision 2296-M

PROOF OF SERVICE BY MAIL

I declare that I am employed in the County of San Francisco, California. I am over the age of eighteen years and not a party to the within cause; my business address is 44 Montgomery Street, Suite 400, San Francisco, CA 94104. On January 2, 2013, I served the enclosed:

LETTER DATED JANUARY 2, 2013 RE *CITY OF LOS ANGELES V. SUP. CT. (ENGINEERS & ARCHITECTS ASSOCIATION)*, CALIFORNIA SUPREME COURT, NO. S192828

on the parties in said cause (listed below) by enclosing a true copy thereof in a sealed envelope and, following ordinary business practices, said envelope was placed for mailing and collection (in the offices of Carroll, Burdick & McDonough LLP) in the appropriate place for mail collected for deposit with the United States Postal Service. I am readily familiar with the Firm's practice for collection and processing of correspondence/documents for mailing with the United States Postal Service and that said correspondence/documents are deposited with the United States Postal Service in the ordinary course of business on the same day.

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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 2, 2013, at San Francisco, California.

Joan Gonsalves

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, LOCAL LODGE 1930, DISTRICT 947, Charging Party, v. CITY OF LONG BEACH, Respondent.	Case No. LA-CE-537-M PERB Decision No. 2296-M December 4, 2012

Appearances: Holguin, Garfield, Martinez & Quinoñez by Dana S. Martinez, Attorney, for International Association of Machinists & Aerospace Workers, Local Lodge 1930, District 947; Atkinson, Andelson, Loya, Ruud & Romo by Nate J. Kowalski, Attorney, for City of Long Beach.

Before Martinez, Chair; Dowdin Calvillo and Huguenin,Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the City of Long Beach (City) to the proposed decision of an administrative law judge (ALJ). The complaint alleged that the City violated the Meyers-Milias-Brown Act (MMBA)[1] by unilaterally implementing a five-day furlough on employees represented by the International Association of Machinists & Aerospace Workers, Local Lodge 1930, District 947 (IAM), without satisfying its obligation to meet and confer in good faith. The ALJ found that the City violated the MMBA by unilaterally implementing the furloughs. For the reasons set forth below, we affirm the ALJ's determination.

[1] The MMBA is codified at Government Code section 3500 et seq. Unless otherwise noted, all statutory references are to the Government Code.

FACTUAL SUMMARY

At all relevant times, the City and IAM were parties to a memorandum of understanding (MOU) governing the terms and conditions of employment of five bargaining units of City employees.[2] Article VI, Section XIII of the MOU lists three work schedule alternatives, each totaling 40 hours per week: a 5/40 schedule defined as working five eight-hour days Monday through Friday; a 9/80 schedule defined as eight nine-hour days and one eight-hour day in a two week pay period; and a 4/10 work schedule defined as four ten-hour days each week.[3] Section A.4 of Section XIII permits the City to approve other work schedules, and provides:

> Other work schedule alternatives may be approved by the City Manager or the appropriate appointing authority, if it is determined to be operationally advantageous and does not exceed forty (40) hours of scheduled work in the defined FLSA work week. Other approved work schedules shall not reduce service to the public, departmental effectiveness, productivity and/or efficiency or increase overall City costs as determined by the City Manager or the appropriate appointing authority.

Section B of Section XIII provides:

> Alternative Work Schedules (work schedules other than the traditional 5/40 work schedule) must be approved by the City Manager or the appropriate appointing authority.

In addition, Article I, Section VII of the MOU provides:

> It is understood and agreed that there exists within the City, in written form, Personnel Policies and Procedures and Departmental Rules and Regulations. Except as specifically modified by this MOU, <u>these rules, regulations, and Policies and Procedures, and any subsequent amendments thereto, shall be in full force and effect during the term of this MOU</u>. Before any

[2] The units are: Refuse, Skilled and General, Office and Technical, Professional, and Protection.

[3] Each of the defined schedules includes a one-hour lunch, unless a shorter lunch period is approved by the City Manager or appropriate appointing authority.

> new or subsequent amendments to these Personnel Policies and Procedures or Departmental Rules and Regulations, directly affecting wages, hours, and terms and conditions of employment are implemented, the City shall meet with the Union regarding the changes in accordance with Government Code Sections 3500 et seq. Per Government Code section 3505, 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. Nothing provided herein shall prevent the City from implementing rules and regulations provided it has met with the Union as required by law. Employee wages and fringe benefits will not be reduced unless agreed to by the Union.

(Emphasis added.)

No document entitled "Personnel Policies and Procedures" or "Departmental Rules and Regulations" was introduced into evidence at the hearing. The parties did introduce, however, the City's Civil Service Rules and Regulations (CSRRs) adopted under the City Charter. Section 92 of the CSRRs authorizes the City to lay off or reduce the hours of employees for reasons of economy or due to a lack of work or funds, and provides, in relevant part:

> For reasons of economy or due to a lack of work or funds, an appointing authority may reorganize or eliminate any department, bureau, or division, or may abolish any position under its direct jurisdiction, and/or reduce the number of, or the hours worked by City employees. . . .

Beginning in mid-2008, the City began to experience significant shortfalls in revenues. On July 1, 2008, the City Manager issued a budget message projecting a $16.9 million structural budget deficit for the fiscal year 2008-2009.[4] In August 2008, the City Council approved a budget with substantial cuts in order to address the deficit. However, as the fiscal year progressed, the City determined that, consistent with general economic conditions

[4] The City's fiscal year runs from October 1 through September 30.

prevailing at the time, its economic situation had become worse and that further cuts were necessary.

In a memo to the City Manager dated October 23, 2008, the City's Director of Financial Management, Lori Ann Farrell (Farrell), described the general economic downturn as "a crisis impacting all sectors of the economy" and asserts that the City's revenues "will continue to be negatively impacted by the economic downturn and this recent global crisis." The memorandum further states that several measures would be implemented immediately to address the City's budget concerns. The memo further states:

> **A mandatory five-day employee furlough will be explored.** It is estimated that a one-week furlough on non-public safety and non-critical employees would save approximately $700,000 - $900,000 in the General Fund in FY 09. While this action is certainly a meet-and-confer issue with the employee bargaining units, and would represent an approximately 2 percent salary reduction for participating employees, we hope for the full cooperation of all unions in finding a unified solution to our current challenges.

(Underlining added; bold in original.)

The City and IAM met on January 29, February 19, February 26, and March 5, 2009 to discuss cost savings options for the 2008-2009 fiscal year. Both furloughs and layoffs were among the options discussed. The parties also discussed other cost savings ideas obtained by IAM from its members. No agreement was reached. The City did not declare impasse and did not present a last, best and final offer to IAM.

By memorandum dated March 4, 2009, Farrell advised the City Manager, the Mayor, and the City Council that the estimated budget deficit was now $20 million. Regarding furloughs, the memorandum stated:

> With the significant financial challenges the City is facing, we are planning on implementing a five-day (40 hours) employee furlough during the current fiscal year, which is estimated to

> generate approximately $4 million in savings to the General Fund. The furlough will likely take place the last Friday of the month from May to September in the current year. We will make sure the public is well-informed in advance of the planned closures so that they can plan accordingly. We are still evaluating an effective approach to implementing furloughs with our public safety personnel, or other alternatives that will generate equivalent savings, while maintaining the safety of the community. We have met with all employee associations to discuss furloughs and will continue to welcome further discussion with the Unions of alternatives that would achieve the same savings in the current fiscal year. We will continue to keep the City Council informed prior to implementation of these cost-saving measures.

Attached to the March 4, 2009 memorandum is a letter to all City employees advising them that the City will likely implement both employee layoffs and the five-day furlough by the end of the fiscal year.[5] According to Farrell, it was necessary to implement the furloughs no later than May 2009 in order to minimize the impact on the community and the employees by having the furloughs spread out over five months rather than a shorter time period.

IAM and the City met again on April 9, 2009. The parties discussed the impact of the furloughs on the need for layoffs, overtime, health benefits, and leave time. IAM made several proposals on how the furloughs should be implemented, in the event IAM agreed to them. During the meeting, the City informed IAM that it had begun the process of implementing furloughs and that it would be recommending that the City Council vote to go forward with its plan of implementing five furlough days on the last Friday of each month from May through October 2009. The parties agreed to continue to discuss alternatives, however, and scheduled another meeting for May 7, 2009.

In an e-mail dated April 22, 2009, IAM Chief Spokesman Ray Rivera (Rivera) notified City Human Resource Director Suzanne Mason (Mason) that IAM understood that the City

[5] The record does not indicate whether that letter was ever sent to the employees.

Council would be voting to go forward with the City's furlough plan at its meeting on May 5, 2009. Rivera noted that the parties had a meeting scheduled for two days later, on May 7, 2009, but questioned the utility of the meeting since the City was going forward with the furloughs. Rivera notified Mason that IAM was going to file an unfair practice charge over the furloughs.

Mason responded to Rivera on April 23, 2009 and stated that, while the City remained open to continue to meet to discuss employee-generated alternatives to furloughs, and that the meeting on May 7 would be an opportunity to do so, it was going to have to move forward with furloughs if there were no alternatives to negotiate. The e-mail further stated, "At this point reduced work hours is the only alternative available to the City Manager to generate the needed General Fund savings by $4 million and $7.2 million Citywide. We will remain available to discuss alternatives with all Unions and the City Council letter will say so. As with the State of CA and the SEIU, negotiated alternatives can follow implementation."

On May 5, 2009, following the formal recommendation of City Manager Patrick West (West), the City Council authorized the implementation of a mandatory unpaid furlough of 40 hours for regular, full-time employees. West further recommended that the City continue to meet with union representatives to explore cost-saving measures. The resolution provides, in relevant part:

> NOW, THEREFORE, the City Council of the City of Long Beach resolves as follows:
>
> Section 1. Employee work furloughs equivalent to 1.92 percent of annual salary (i.e., 40 hours of unpaid time off for a regular full time employee) be implemented which may result in service reductions and possible City business closures in order to generate needed savings.

> Work furloughs may not be required in the event alternative equivalent employee generated savings are negotiated with a labor organization.

Under the furlough plan, some departments implemented business closure days, while others required employees to take a "floating" unpaid furlough day of eight hours per month. The City's Harbor Department utilized the floating furlough day. Many employees in that department, however, worked a "9/80" schedule, such that they worked eight nine-hour days and one eight-hour day over a two-week period. For those employees, the City required employees who took their furlough day on what would have been a nine-hour day to use accrued leave, such as vacation, for the extra hour. This requirement was not discussed during the meetings between IAM and the City and was not included in the City Council's May 5, 2009 resolution. In addition, at least 88 employees were granted permission to take "floating" furloughs, rather than one day per month.

On July 21, 2009, the City Council adopted a resolution declaring a fiscal emergency.

ALJ'S PROPOSED DECISION

The ALJ determined that the City unlawfully implemented two furlough policies: one requiring furloughs of one eight-hour day per month and one requiring Harbor Department employees to use accrued leave to make up the extra hour on nine-hour work days. The ALJ determined that the unilateral changes were not authorized by former MMBA section 3505.4[6] because the City never made a last, best and final offer and never declared impasse. The ALJ rejected the City's argument that the changes were authorized by the parties' MOU and that the City had the legal authority to implement them in response to a fiscal emergency under MMBA section 3504.5.

[6] Former MMBA section 3505.4 was repealed effective January 1, 2012. (AB 646, 2011 Stats. Ch. 680, § 1.)

THE CITY'S EXCEPTIONS

The City excepts to the following determinations by the ALJ:

1. Nothing specifically titled "Personnel Policies and Procedures" or "Departmental Rules and Regulations" was admitted into evidence.

2. The City never made a last, best and final offer and never declared impasse.

3. The City unilaterally implemented two furlough policies that were not authorized by MMBA section 3505 because the City never made a last, best and final offer and never declared impasse.

4. Section 92 of the City's CSRRs was not incorporated by reference into the parties' MOU.

5. There was no clear and unmistakable waiver of the right to bargain over furloughs.

6. The City did not prove a financial emergency in May 2009 when it implemented the furlough policies.

7. The City did not prove that it had no alternatives to furloughs.

8. The City violated the MMBA by unilaterally and unlawfully implementing two furlough policies.

9. It is appropriate to order the City to cease and desist from implementing furloughs, to rescind the furlough resolution of May 5, 2009, and to make affected employees whole.

The City made the following arguments in support of its exceptions to the ALJ's proposed decision:

1. The City's CSRRs were incorporated into the parties' MOU and permitted the City to unilaterally impose furloughs.

2. The City Council exercised the necessary express authority for the City to implement the temporary furloughs.

3. A fiscal emergency authorized the imposition of furloughs under MMBA section 3504.5.

4. The decision to implement furloughs was authorized by waiver pursuant to the management rights clause contained in the parties' MOU.

5. The City exhausted its bargaining obligations under former MMBA section 3505.4 prior to the imposition of furloughs.

IAM'S RESPONSE

IAM agrees with all of the ALJ's conclusions and argues:

1. The City's CSRRs do not permit the reduction of hours in the form of furloughs.

2. The City Council did not have express authority to unilaterally implement furloughs.

3. There was no fiscal emergency that authorized the unilateral imposition of furloughs.

4. The City's management rights clause does not authorize the unilateral imposition of furloughs.

5. The City failed to exhaust its bargaining obligations.

ISSUE

Did the City violate its duty to meet and confer under MMBA section 3505 when it implemented a five-day employee furlough policy on May 5, 2009?

DISCUSSION

Supplemental Briefing

The ALJ issued his proposed decision on June 1, 2012. On June 26, 2012, the City filed its exceptions to the ALJ's proposed decision. On July 5, 2012, IAM requested an extension of time until July 27, 2012 within which to respond to the City's exceptions.[7] The PERB Appeals Assistant granted that request on July 6, 2012. On July 19, 2012, the City submitted a supplemental brief in support of its exceptions, requesting that the Board consider the decision of the California Supreme Court issued on July 2, 2012 in *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547 (*City of Vista*). On July 27, 2012, IAM filed both a supporting brief and response to the City's exceptions and a response to the City's supplemental brief in support of its exceptions.

IAM contends that the City's supplemental brief was not timely filed and should not be considered. We view the City's supplemental brief as a request to reopen the record to admit new authority. When considering a request to reopen the record to admit new evidence, the Board applies the standard set forth in PERB Regulation 32410(a) for a request for reconsideration based on the discovery of new evidence. (*State of California (Department of Parks and Recreation)* (1995) PERB Decision No. 1125-S.) The regulation provides, in relevant part:

> A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was

[7] On July 11, 2012, the City filed a request for oral argument. The PERB Appeals Assistant denied that request as untimely on July 18, 2012, pursuant to PERB Regulation 32315 (requiring request for oral argument to be filed with the statement of exceptions.) The City has not appealed from that determination. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

> submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

We apply the same standard to the City's request to reopen the record to consider new legal authority. The new legal authority consists of a case decided by the California Supreme Court on July 2, 2012, six days after the City filed its exceptions and supporting brief. Therefore, the authority was not previously available, nor could it have been discovered prior to submission of the exceptions with the exercise of reasonable diligence. The City's request was submitted within a reasonable time after issuance of the Supreme Court decision. While, as noted below, we do not find the decision persuasive on the issues before us, it has some relevance to the issue of whether the CSRRs authorized the City to implement furloughs without complying with the meet and confer obligations of the MMBA. Because this case is not before us on a request for reconsideration, we do not find the fifth factor relevant to the issue of whether the record should be reopened to receive new legal authority. Accordingly, we find good cause to accept the City's supplemental brief.[8]

Unilateral Change

The charge alleges that, by unilaterally imposing furloughs, the County violated its duty to meet and confer in good faith as required under the MMBA. An employer's unilateral change in terms and conditions of employment constitutes a "per se" violation of its duty to bargain in good faith when: (1) the employer breached or altered the parties' written agreement or its own established past practice; (2) such action was taken without giving the other party notice or an opportunity to bargain over the change; (3) the change was not merely

[8] In its response to the supplemental brief, IAM requested additional time to respond to the arguments raised therein in the event PERB accepts the City's supplemental brief. In light of our determination, *infra*, that the legal authority identified in the supplemental brief is inapplicable to this case, we find further briefing unnecessary.

an isolated breach of the contract, but amounts to a change in policy (i.e., it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802; *San Joaquin County Employees Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813; *Grant Joint Union High School District* (1982) PERB Decision No. 196 (*Grant*); *Walnut Valley Unified School District* (1981) PERB Decision No. 160.)

1. Breach or Alteration of Written Agreement or Past Practice

To prevail in a unilateral change case, the charging party must first establish that the employer breached or altered the parties' written agreement or an established past practice. (*Grant, supra,* PERB Decision No. 196.) However, an employer does not make a unlawful change if its actions conform to the terms of the parties' agreement. (*Marysville Joint Unified School District* (1983) PERB Decision No. 314; *County of Ventura (Office of Agricultural Commissioner)* (2011) PERB Decision No. 2227-M.)

Prior to May 5, 2009, the City's employees were subject to 40-hour workweek and were not furloughed. After May 5, 2009, the City changed this practice to furlough employees one day per month for five months. Therefore, at its most basic level, the first element of a prima facie case of unilateral change has been established. The City contends, however, that the CSRRs were incorporated into the parties' MOU by virtue of Article I, Section VII, and that those provisions authorized the City to unilaterally implement furloughs. Thus, the City appears to argue that its actions conformed to the terms of the parties' agreement, such that there was no breach or alteration of a written agreement.

Article I, Section VII, provides that the City's written "Personnel Policies and Procedures and Departmental Rules and Regulations," and any subsequent amendments

thereto, "shall be in full force and effect during the term of this MOU." That section further provides that the City shall meet and confer prior to implementing any changes in these "Personnel Policies and Procedures or Departmental Rules and Regulations" directly affecting wages, hours and terms and conditions of employment. Finally, the MOU provides that employee wages and fringe benefits will not be reduced unless agreed to by IAM.

No documents entitled "Personnel Policies and Procedures" or "Departmental Rules and Regulations" were offered into evidence at the hearing before the ALJ. In addition, no evidence of bargaining history over either MOU Article I, Section VII or CSRR Section 92 was introduced into evidence at the hearing. Thus, we cannot conclude that the contractual language establishes a clear intent to incorporate the CSRRs into the MOU.[9] Moreover, even if we were to construe the MOU to incorporate the CSRRs, the provisions of Article I, Section VII, on their face require the City to meet and confer prior to implementing any change affecting wages, hours and terms and conditions of employment, and prohibit the City from reducing wages without the agreement of IAM. Therefore, we conclude that the MOU did not authorize the unilateral implementation of furloughs.

2. Without Notice and an Opportunity to Bargain

The City argues that, even if it had an obligation under the MMBA to bargain over the imposition of furloughs, it satisfied that obligation by meeting and conferring in good faith with the Association on multiple occasions prior to imposing the furloughs. The City contends that former MMBA section 3505.4 did not require it to make a formal declaration of impasse or make a "last, best and final offer" prior to implementation.

[9] We discuss at pages 17-20 below the City's argument that Section 92 gave it the independent authority to unilaterally impose furloughs without first meeting and conferring with IAM.

Former MMBA section 3505.4 provided:

> If after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

MMBA section 3505 defines the bargaining obligation as follows:

> 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.

Although the term "impasse" appears several times in the MMBA, the MMBA itself, unlike other statutes within PERB's jurisdiction, does not contain a definition of impasse.

Under the Educational Employment Relations Act (EERA),[10] impasse is defined to mean that "the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile." (EERA, § 3540.1(f).)[11] Thus, PERB has held that an impasse in bargaining exists where the "parties have considered each other's proposals and counterproposals, attempted to narrow the gap of disagreement and have, nonetheless, reached a point in their negotiations where continued discussion would be futile." (*Mt. San Antonio Community College District* (1981) PERB Order No. Ad-124.)

Despite the absence of a specific statutory definition under the MMBA, the concept of impasse is well established as a term of art under the MMBA. MMBA section 3505 defines the obligation to meet and confer in good faith as requiring the parties to meet and confer "for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement." Former section 3504.5 permitted the public agency, after meeting and conferring in good faith, to implement its last, best and final offer after an impasse has been reached and any applicable impasse resolution procedures exhausted.[12] Typically, an employer seeking to unilaterally implement its proposal after reaching impasse will present a last, best, and final offer and formally declare impasse. (See, e.g., *City of Davis* (2012) PERB Decision No. 2271-M (*City of Davis*) [finding city unlawfully implemented last, best, and final offer including furloughs prior to exhausting of impasse resolution procedures].) Given the

[10] EERA is codified at section 3540 et seq.

[11] Similarly, under the Higher Education Employer-Employees Relations Act (codified at § 3560 et seq.), impasse is defined to mean that "the parties have reached a point in meeting and conferring at which their differences in positions are such that further meetings would be futile." (§ 3562(j).)

[12] In this case, there is no evidence of any applicable impasse resolution procedures.

overwhelming acceptance of the concept of impasse as a term of art central to labor relations, we find the definition of impasse under EERA, as interpreted by PERB, to be appropriate under the MMBA as well. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608 (*Vallejo*).[13])

Based upon the record before us, it appears that the City had always intended to implement a five-day furlough by May 2009. Nonetheless, the parties continued to actively discuss furloughs and other alternative cost-saving measures through April 9, 2009, and had scheduled another meeting for May 7. There is no evidence to support a conclusion that they reached a point at which further negotiations would be futile. Thus, regardless of whether or not the City formally declared impasse or presented a "last, best and final offer," we conclude than an impasse did not exist as of May 5, 2009.

3. Change in Policy

There is no question that the implementation of furloughs had a generalized effect and continuing impact on the terms and conditions of employment of bargaining unit employees, thereby constituting a change in policy. (*Grant, supra,* PERB Decision No. 196.)

4. Within Scope of Representation

MMBA section 3504 provides:

> The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

[13] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions.

Both wages and hours are expressly included within the scope of representation under the MMBA. Thus, because the imposition of furloughs clearly affects both wages and hours of work, it is within the scope of representation, unless an exception or defense applies. (See also *San Ysidro School District* (1997) PERB Decision No. 1198 [reduction in hours is within scope of bargaining].) We address the City's asserted waiver defense below, along with its argument that the contractual provisions are consistent with its right to unilaterally implement fundamental management decisions.

The City's Defenses

The City asserts several arguments as defenses to the unilateral change complaint.

1. CSRR Section 92

The City argues that Section 92 of the CSRRs authorized it to reduce employee hours by unilaterally implementing furloughs, without regard to the requirements of the MMBA. Section 92 provides that, "for reasons of economy or due to a lack of work or funds, an appointing authority may reorganize or eliminate any department, bureau, or division, or may abolish any position under its direct jurisdiction, and/or reduce the number of, or the hours worked by City employees." According to the City, this language permitted it to unilaterally reduce employee hours in the form of furloughs.

Nothing in Section 92 expressly mentions furloughs, nor is there any evidence that the parties bargained over this provision. In contrast, the Board has found no unilateral change where, after first bargaining to impasse prior to the adoption of a policy expressly granting the employer the authority to furlough employees, the employer applied the policy to a group of employees initially excluded but later covered by a subsequently negotiated amendment. (*County of Fresno* (2010) PERB Decision No. 2125-M.) Here, there is no evidence that Section 92 was intended to include furloughs, nor that the parties ever bargained over the

provision. Accordingly, we decline to interpret it as authorizing the City to unilaterally implement furloughs.

Even assuming, *arguendo*, that Section 92 could be read to authorize furloughs, it would not necessarily eliminate the City's obligations to meet and confer under the MMBA. (*Building Material & Construction Teamsters' Union, Local 216 v. Farrell* (1986) 41 Cal.3d 651 (*Farrell*).) In *Farrell*, the court considered whether provisions of the San Francisco city charter giving the civil service commission the authority to reclassify or reallocate positions authorized the city to unilaterally eliminate bargaining unit positions and reassign their duties outside the unit, without complying with the meet and confer requirements of the MMBA. The court held that the longstanding rule that "statutes should be construed in harmony with other statutes on the same general subject" applied as well to potential conflicts between a statute and a charter provision. (*Id.* at p. 665.) Applying this rule, the court found that the power to reclassify employment positions was not necessarily inconsistent with the meet and confer requirements of the MMBA, since "public agencies retain the ultimate power to refuse to agree on any particular issue." (*Ibid.*) In addition, the court found that the charter language at issue did not clearly vest exclusive authority with the commission or encompass the power to divert duties from one classification to another. (*Id.* at p. 666.)

Furthermore, as noted by the court in *Farrell, supra,* 41 Cal.3d 651, the MMBA's meet and confer requirements have generally been found to be compatible with other legal and contractual provisions. (See, e.g., *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d. 591 (*Seal Beach*) [city's constitutional right to propose charter amendments is compatible with mandate to meet and confer before proposing amendments concerning terms and conditions of public employment]; *Los Angeles County Civil Service Com. v. Superior Court* (1978) 23 Cal.3d 55 [MMBA's meet and confer requirements not

inconsistent with county charter provision requiring civil service commission to hold public hearings before amending layoff rules]; *Independent Union of Pub. Service Employees v. County of Sacramento* (1983) 147 Cal.App.3d 482 [agreement between county and union giving county the exclusive right to assign employees held not inconsistent with duty to meet and confer over shift changes].) Therefore, considering the general rules of statutory construction, the specific wording of the charter provision in that case, and the weight of authority, the court concluded that the requirements of the MMBA were not incompatible with the city charter. (*Farrell, supra,* 41 Cal.3d at p. 667; see also *South Placer Fire Protection District* (2008) PERB Decision No. 1960-M [public entity had no management right to unilaterally reclassify employees to a position outside bargaining unit, notwithstanding employer's claim that local employer-employee relations resolution gave it the exclusive right to reclassify employees].)

As with the city charter in *Farrell, supra,* 41 Cal.3d 651, nothing in CSRR Section 92 purports to exempt the City from compliance with the meet and confer obligations under the MMBA prior to implementing a reduction in employee work hours. It is also far from clear that Section 92's language permitting the City to reduce employee hours also authorizes it to impose employee furloughs. As discussed above, the MOU also contains language requiring the parties to meet and confer before the City may amend its personnel policies or departmental rules and regulations on matters directly affecting wages, hours and terms and conditions of employment, and prohibits the City from reducing wages unless agreed to by IAM. Furthermore, because not all IAM bargaining unit employees are within the civil service, Section 92 would not apply to them. Given our obligation to attempt to harmonize local rules with the requirements of the MMBA, we do not construe Section 92 to authorize the

City to act unilaterally without compliance with the meet and confer obligations of the MMBA.

We further find that *City of Vista, supra,* 54 Cal.4th 547, submitted by the City in its supplemental brief, has no bearing on the issues before us. In that case, the court held that state prevailing wage law was inapplicable to charter cities, pursuant to article VI, section 5 of the California Constitution. As recognized by the City in its supplemental brief, it is well established that the meet and confer requirements of the MMBA are a matter of statewide concern and enforceable against charter cities. (*Id.* at p. 564, citing *Seal Beach, supra,* 36 Cal.3d at p. 600, and *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 294-295.) The City relies, however, on a footnote in *Seal Beach* in which the court noted that while the *substance* of the salaries of local charter city employees is not subject to general law, the *process* by which its salaries are fixed is obviously a matter of statewide concern. (*Id.* at p. 600, fn. 11.) According to the City, Section 92 "constitutes a substantive provision in the sense that it authorizes emergency reduction of employee hours in the case of lack of work or funds" and is therefore not procedural and subject to bargaining under the MMBA. We disagree. While the number of hours worked by City employees may be a matter of local concern, the process by which a change in employee hours is determined is a matter of statewide concern. We therefore reject the City's argument that CSRR Section 92 is a "substantive" provision within the meaning of the *Seal Beach* footnote that renders the meet and confer requirements of the MMBA inapplicable.

2. Waiver

The City argues that its decision to implement furloughs was authorized by waiver pursuant to the management rights clause contained in the parties' MOU. Waiver is an affirmative defense that must be proven by the party asserting it. (*Regents of the University of*

California (2004) PERB Decision No. 1689-H.) Waiver of the right to bargain must be "clear and unmistakable." (*Amador Valley Joint Union High School District* (1978) PERB Decision No. 74; *Farrell, supra,* 41 Cal.3d 651.) Waiver will not be lightly inferred and any doubts must be resolved against the party asserting it. (*Placentia Unified School District* (1986) PERB Decision No. 595.) A generally-worded management rights clause will not be construed as a waiver of the right to bargain. (*San Jacinto Unified School District* (1994) PERB Decision No. 1078 (*San Jacinto*) [language giving management right to determine times and hours of operation and to assign employees does not give employer contractual right to unilaterally change employee's assigned hours].)

The parties' MOU contains a management rights clause, Section VI(A), which states, in relevant part:

> The City reserves, retains, and is vested with all rights to manage the City. The constitutional, statutory, charter, or inherent rights, powers, authority, and functions shall remain exclusively vested with the City pursuant to Government Code Section 3500 et seq. These rights include but are not limited to the following:
>
> 1. To manage the City.
>
> 2. To determine the necessity, organization, and standards to implement any service or activity conducted by the City.
>
> 5. To determine and/or change the size and composition of the City work force and assign work to employees.
>
> 7. To maintain order and efficiency in City facilities and operations.
>
> 10. All rights, powers, authority, and functions of management, whether heretofore or hereinafter exercised, shall remain vested exclusively with the City.

The City asserts that this language, giving the City the right to determine and/or change the size and composition of the City work force and assign work to employees, permits it to

unilaterally impose furloughs. We disagree. The general language authorizing the City to determine the size and composition of its workforce and to assign work does not clearly and unmistakably waive the Association's right to bargain over the reduction in wages and hours imposed by the implementation of furloughs. (*San Jacinto, supra,* PERB Decision No. 1078.)

The City also argues that these contractual provisions are "consistent with those fundamental management decisions that have been deemed to be outside the scope of representation that requires bargaining." Pursuant to the final clause of MMBA section 3504, an employer may be excused from the obligation to bargain under the MMBA when the employer's action is a "fundamental managerial or policy decision" that falls outside the scope of representation. (*Farrell, supra,* 41 Cal.3d 651; *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623.) A "fundamental management decision" is one that directly affects the quality and nature of public services. (*Farrell, supra*, 41 Cal.3d at pp. 662-664; *Sutter County In-Home Supportive Services Public Authority* (2007) PERB Decision No. 1900-M (*Sutter County*).) For example, the decision to lay off employees has been found to be a fundamental management decision outside the scope of bargaining. (*City of Richmond* (2004) PERB Decision No. 1720-M; *Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223; *Vallejo, supra,* 12 Cal.3d 608; see also *San Jose Peace Officers Assn. v. City of San Jose* (1978) 78 Cal.App.3d 935 [matters relating to public safety are within the managerial prerogative; regulation governing circumstances under which a police officer may discharge a firearm fell within managerial prerogative because of its fundamental public safety purpose]; *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931 [police review procedure was a matter of police-community relations, and thus a managerial policy decision outside scope of representation].) On the other hand,

decisions that primarily affect wages, hours and other terms and conditions of employment are within the scope of representation and thus subject to bargaining. (*Sutter County*.)

We disagree that the City's decision to furlough employees was a fundamental management decision over which it did not have to bargain. It is clear that the City viewed the matter to be within the scope of representation, as it repeatedly asserted to the City Council that the furloughs would be subject to the meet and confer process. It is equally clear that the decision was not aimed at affecting the quality, nature or level of service to the public, but rather to save money by reducing employee wages. Accordingly, we find the management rights exception inapplicable.[14]

3. City Council Ratification of City's Implementation of Furloughs

The City asserts that, by adopting the May 5, 2009 resolution approving the furlough plan, the City Council "ratified" the City's unilateral implementation of temporary furloughs, citing *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989 (*Professional Engineers*). In *Professional Engineers*, the California Supreme Court held that neither the California Constitution nor existing state statutes or MOU provisions authorized the Governor or the Department of Personnel Administration to unilaterally impose a mandatory furlough of state employees by way of an executive order. (*Id.* at p. 1041.) The Court further held, however, that the subsequent enactment by the Legislature of the Budget Act had the effect of "validating the plan that the Governor lacked authority to impose unilaterally." (*Id.* at p. 1044.)

[14] In reaching this decision, we make no determination as to whether or not the imposition of furloughs may fall within the scope of the management rights in another case. In this case, there is simply no evidence that the City's decision was aimed at affecting the quality, nature or level of service to the public, as opposed to employee wages.

The Court in *Professional Engineers, supra,* 50 Cal.4th 989, based its decision on two unique provisions of the Ralph C. Dills Act (Dills Act)[15] giving the Legislature "ultimate control (through the budget process) over expenditures of state funds required by the provisions of an MOU." (*Id.* at p. 1043.) First, Dills Act section 3517.6(b) provides, in relevant part: "If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature in the annual Budget Act." Second, Dills Act section 3517.7 provides:

> If the Legislature does not approve or fully fund any provision of the memorandum of understanding which requires the expenditure of funds, either party may reopen negotiations on all or part of the memorandum of understanding.
>
> Nothing herein shall prevent the parties from agreeing and effecting those provisions of the memorandum of understanding which have received legislative approval or those provisions which do not require legislative action.

Thus, the Court concluded, "[b]y virtue of these provisions in the Dills Act, the Legislature retained its ultimate control (through the budget process) over expenditures of state funds required by the provisions of an MOU." (*Professional Engineers, supra,* 50 Cal.4th at p. 1043, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 178 ["under [section 3517.6], virtually all salary agreements are subject to prior legislative approval"].) In exercising that authority, the Court concluded, the Legislature effectively relieved the state from its duty to bargain by providing that the reduction in employee compensation shall be "'achieved through the collective bargaining process for represented employees or through existing administration authority.'" (*Professional Engineers*, at pp. 1044-1046.) Accordingly, when the Legislature passed the Budget Act, it acted within its own legislative prerogative in authorizing the

[15] The Dills Act is codified at section 3512 et seq.

reduction in appropriations for employees to be achieved through the two-day-a-month furlough plan. (*Id.* at pp. 1047-1048.)

The City argues that provisions of the MOU, City Charter, and City Municipal Code are analogous to the Legislature's authority recognized by the Court in *Professional Engineers, supra,* 50 Cal.4th 989, and authorized the City Council to authorize the unilateral implementation of furloughs. Specifically, the City relies on the following provisions:

> The City reserves, retains, and is vested with all rights to manage the City. The constitutional, statutory, charter, or inherent rights, powers, authority, and functions shall remain exclusively vested with the City pursuant to Government Code section 3500 et seq.

(MOU, Article I, Section VI.)

> Upon the commencement of the fiscal year, the budget and appropriations ordinance as returned by the Mayor, and to the extent modified thereafter by the City Council, shall become the budget and appropriations ordinance for the ensuing fiscal year.

(City Charter, Section 1704.)

> The Appropriation Ordinance shall govern and control the expenditure and commitment amounts stated therein relating to the several departments, offices and agencies during each fiscal year.

(City Charter, Section 1705.)

> Prior to the beginning of each fiscal year, the Council shall, by resolution, establish the appropriations limit for the forthcoming fiscal year pursuant to Article XIII B of the California Constitution. Such appropriations limit may thereafter be revised from time to time as provided by law.

(City Municipal Code, Section 3.04.090.)

While these provisions appear to define the City Council's authority over the budget process, they cannot exempt the City from its bargaining obligations under the MMBA. Unlike the Dills Act, nothing in the MMBA vests ultimate authority with local governing

bodies to use their legislative authority, through the budget approval process, to relieve covered employers from their bargaining obligations. Moreover, unlike the Legislature, which enacted both the Dills Act and the MMBA, a local entity such as the City does not have the authority to modify existing state law. Accordingly, we conclude that *Professional Engineers supra,* 50 Cal.4th 989, does not support the City's position.

4. Fiscal Emergency

The City argues that MMBA section 3504.5 authorized it to impose furloughs unilaterally due to the existence of an emergency. Section 3504.5 provides, in relevant part:

> 3504.5. Notice of proposed act relating to matters within scope of representation; meeting; emergencies
>
> (a) Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions and shall give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions.
>
> (b) In cases of emergency when the governing body or the designated boards and commissions determine that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or the boards and commissions shall provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

(Emphasis added.)

The Board has held that an employer's generalized concerns about its future financial condition does not relieve it of the obligation to bargain. (*San Francisco Community College District* (1979) PERB Decision No. 105 [employer's legitimate economic concerns over

reduction in local property tax revenues following passage of Proposition 13 did not authorize it to act unilaterally or relieve it of the obligation to meet and negotiate]; *San Francisco Community College District* (1980) PERB Decision No. 146 [economic concerns did not relieve employer of obligation to bargain over reduction in salaries and benefits]; *San Mateo County Community College District* (1979) PERB Decision No. 94 [same].) In *Calexico Unified School District* (1983) PERB Decision No. 357 (*Calexico*), PERB held that, to establish a defense to bargaining based upon business necessity, the employer must establish "an actual financial emergency which leaves no real alternative to the action taken and allows no time for meaningful negotiations before taking action." (*Id.* at p. 20, citing *San Francisco Community College District, supra,* PERB Decision No. 105.) Applying this standard, the Board has found no fiscal emergency where a city did not declare financial emergency, had sufficient reserves to address its projected shortfall, and had readily available alternatives to unilateral action. (*City of Davis, supra,* PERB Decision No. 2271-M, adopting ALJ's proposed decision.)

The City appears to argue that the "actual financial emergency" that existed was that, as of March 2009, the City was experiencing a nearly $20 million budget shortfall, and that, by May 5, 2009 "there was simply no more time available to delay the implementation of the furlough plan." This argument is based on the City's prior determination that a five-day employee furlough was necessary to address the City's budget situation. Given that the City did not formally declare a fiscal emergency until July 2009, two months after it unilaterally implemented its furlough plan, the City's claim of financial emergency as of May 5, 2009 is questionable. (*City of Davis, supra,* PERB Decision No. 2271-M.) Even assuming the

existence of a financial emergency, a fact disputed by the Association,[16] the City failed to establish that it had no alternative to unilaterally imposing furloughs on May 5, 2009, rather than complete the meet and confer process. Instead, it appears that the City unilaterally determined as far back as October 2008 that a five-day employee furlough consisting of one day per month through the end of the fiscal year was the only means of achieving its desired budget savings. The City's desire to implement its predetermined furlough plan does not establish an emergency justification under the *Calexico, supra,* PERB Decision No. 357, standard for dispensing with its bargaining obligations.

The City also argues that its conduct was justified by decisions addressing the impairment of contracts clauses under the United States and California Constitutions.[17] In *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, the court held that a statute that invalidated local employee cost-of-living wage increases agreed to during collective bargaining was not justified by any financial emergency and therefore violated the federal and state constitutional prohibitions against impairment of contracts.[18] The case before us does not involve the issue of whether an existing contractual obligation has been impaired, but whether the City satisfied its meet and confer obligations under the MMBA. Thus, *Sonoma County* and the federal cases relied upon by the City have no bearing on the issues in this case.

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[16] The Association contends that only approximately $4 million of the budget deficit was to be addressed by furloughs, of which only $1.2 million would be generated by the furlough of Association employees. The Association further contends that the City had earmarked up to $9 million in a Budget Stabilization Fund to be used to address financial emergencies.

[17] U.S. Constitution, article I, section 10; California Constitution, article I, section 9.

[18] The City also relies on federal decisions involving the federal contracts clause (see, e.g., *Buffalo Teachers Federation v. Tobe* (2d Cir. 2006) 464 F.3d 362, and cases cited therein).

Harbor Department Employees

Although the City excepted to the ALJ's determination that it required Harbor Departments to use accrued leave to make up the extra hour of work when furloughing employees who normally worked nine-hour days, it offered no argument in support of its position that the parties bargained to impasse on this issue. We find that the ALJ correctly determined that the City unilaterally implemented this change in violation of the MMBA.

ORDER

Based on the foregoing and the entire record in the case, it is found that the City of Long Beach (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505 and 3506 and committed an unfair practice under Government Code section 3509(b) and Public Employment Relations Board (PERB) Regulation 32603(a), (b) and (c) (Cal. Code Regs., tit. 8, § 31001 et seq.), by unilaterally implementing furlough policies without meeting and conferring in good faith with the International Association of Machinists & Aerospace Workers, Local Lodge 1930, District 947 (IAM).

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

A. CEASE AND DESIST FROM:

1. Unilaterally implementing furlough policies without meeting and conferring in good faith with IAM.

2. Denying IAM its right to represent bargaining unit members in their employment relations with the City.

3. Interfering with the right of bargaining unit members to be represented by their chosen representative.

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

1. Rescind the City Council's resolution dated May 5, 2009 and restore the terms and conditions of employment prior to the passing of the May 5, 2009 resolution.

2. Make all affected employees whole for any loss of wages or benefits due to the City's violation of the MMBA, including interest at 7 percent per annum.

3. 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 City are customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the City, 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.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB, or the General Counsel's designee. The City 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 IAM.

Chair Martinez and Member Huguenin joined in this Decision.

APPENDIX

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-537-M, *International Association of Machinists & Aerospace Workers, Local Lodge 1930, District 947 v. City of Long Beach*, in which all parties had the right to participate, it has been found that the City of Long Beach (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505 and 3506, and Public Employment Relations Board Regulation 32603(a), (b) and (c) (Cal. Code Regs., tit. 8, § 31001 et seq.), by unilaterally implementing furlough policies without meeting and conferring in good faith with IAM.

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

A. CEASE AND DESIST FROM:

1. Unilaterally implementing furlough policies without meeting and conferring in good faith with IAM.

2. Denying IAM its right to represent bargaining unit members in their employment relations with the City.

3. Interfering with the right of bargaining unit members to be represented by their chosen representative.

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

1. Rescind the City Council's resolution dated May 5, 2009 and restore the terms and conditions of employment prior to the passing of the May 5, 2009 resolution.

2. Make all affected employees whole for any loss of wages or benefits due to the City's violation of the MMBA, including interest at 7 percent per annum.

Dated: _____ CITY OF LONG BEACH

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.