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50th Anniversary of the Meyers-Milias-Brown Act

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MCLE Self-Study:

The Meyers-Milias-Brown Act at 50

By Tim Yeung

Fifty years ago, California became one of the first states to give public employees the right to "collectively bargain" with their government employers, with the 1968 passage of the Meyers-Milias-Brown Act (MMBA).[1] While the MMBA only applied to employees of counties, cities, and special districts, it paved the way for subsequent laws covering almost all public employees in California. Some writers have credited Jerry Brown, during his first term as Governor, with opening the door to allowing public employees to unionize.[2] But it was Ronald Reagan, a former President of the Screen Actor's Guild union, who signed the MMBA.

In the private sector, employees gained modern-day collective bargaining rights with the passage of the National Labor Relations Act (NLRA) in 1935. The NLRA was part of the "New Deal" package of reforms signed by President Roosevelt during the Great Depression.[3] The NLRA gave employees the right to form unions, bargain collectively with employers, and the right to strike. The NLRA also created a three-member National Labor Relations Board (NLRB) to adjudicate unfair practices such as an employer's refusal to bargain with a union. However, these rights did not apply to public employees, as the NLRA expressly excludes coverage of states and political subdivisions of states.[4]

It was not until almost 25 years after the passage of the NLRA before states started to give public employees the same rights as private employees to unionize and bargain collectively with their employers. Wisconsin is widely credited with being the first state to allow public employees to unionize, with the passage of the Wisconsin Municipal Employment Relations Act (MERA) in 1959.[5] When

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enacted, MERA only applied to local, and not state, employees in Wisconsin and gave them to right to collectively bargain with their employers.

Two years later, in 1961, Governor Pat Brown signed the George Brown Act, which sought to promote "the improvement of personnel management and employer-employee relations" by requiring that an employer "consider as fully as it deems reasonable" the demands of unions.[6] The Brown Act went further than the MERA in Wisconsin by covering virtually all public employees in California, including employees of the state, school districts, public universities, counties, cities, and special districts. However, by only requiring that employers "consider" union proposals, the Brown Act did not require modern-day collective bargaining.[7]

In the years following passage of the Brown Act, unions in California continued to press for the same collective bargaining rights enjoyed by private sector employees under the NLRA.[8] In addition, other states continued to grant public employees collective bargaining rights.[9] For example, in 1967 New York enacted the Public Employees' Fair Employment Act, commonly referred to as the Taylor Law, which granted public employees collective bargaining rights.[10] Cognizant of these events, the California Legislature in 1968 enacted the MMBA.[11]

Unlike the Brown Act which it replaced, the MMBA only applied to employees of counties, cities, and special districts. But the MMBA went beyond the Brown Act by requiring that employers and unions "meet and confer in good faith regarding wages, hours, and other terms and conditions of employment" with recognized unions.[12] Under the MMBA, to "meet and confer in good faith" imposes 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."[13] This requirement has been interpreted by the courts to be the same requirement as that imposed by the NLRA.[14] Under this requirement, the parties are not required to come to an agreement, but must "endeavor" to do so.[15] Once agreement is reached, the MMBA required the parties to "jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination."[16] Once approved by the governing body of the public employer, the memorandum of understanding would be binding on the parties.[17]

The MMBA also gave employees the statutory right to form, join, and particulate in the activities of the union of their choosing.[18] Under the MMBA, both employers and unions "shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights."[19]

However, the MMBA differed in one significant respect from the NLRA by not providing a mechanism for resolving disputes. Instead of creating a state administrative agency similar to the NLRB—or a Public Employment Relations Board (PERB) as was created under the Taylor Law in New York—the MMBA deferred to a "home-rule" concept by authorizing local employers to adopt "reasonable rules and regulations . . . for the administration of employer-employee relations."[20] This allowed for the creation of "mini-perbs" by employers such as the City of Los Angeles, City of Torrence, County of Fresno and County of Los Angeles.[21] For employers that did not create mini-perbs, enforcement of the MMBA's provisions was generally left to the courts.

Because the MMBA relied on local government employers for its administration, its effectiveness depended much on how local communities viewed collective bargaining.[22] As Professor Joseph Grodin observed in 1972, "[i]n cities and counties where labor is politically strong, patterns of recognition and bargaining tend to approximate the model which exists in the private sector. Where labor is politically weak, the de facto situation shows little change from before the statute."[23] This uneven development in MMBA law led the Legislature to explore whether there was a better system.

In 1972, the Assembly created an Advisory Council on Public Employee Relations chaired by Benjamin Aaron (the Aaron Commission) to evaluate the statutes pertaining to employer-employee relations and to make recommendations for improvement.[24] In its report a year later, the Aaron Commission recommended the repeal of the MMBA and the creation instead of a comprehensive collective bargaining statute covering all public employees in California.[25] To administer the proposed new law, the Aaron Commission recommended the creation of a Public Employment Relations Board modeled after the NLRB.[26]

Despite the recommendation of the Aaron Commission, the Legislature was unable to agree on a comprehensive collective bargaining statute.[27] This led the Legislature to enact a series of collective bargaining statutes targeting specific employee groups. The first statute to be enacted was the Educational Employment Relations Act (EERA) in 1975, which covered school district and community college employees. With the enactment of EERA, the Legislature created the Educational Employment Relations Board (EERB) which was modeled after the NLRB.[28] Next, in 1977, the Legislature enacted the State Employer-Employee Relations Act (SEERA, later renamed

the "Ralph C. Dills Act"), which covered state employees.[29] With the enactment of SEERA, the EERB was renamed the Public Employment Relations Board. In 1978, the Higher Education Employer-Employee Relations Act (HEERA) was enacted, covering employees of public institutions of higher education.[30] Notably, during these years the Legislature did not repeal the MMBA in favor of a more comprehensive statute and never brought the MMBA under the jurisdiction of EERB or PERB.

This system of having EERA, HEERA, and the Dills Act under the jurisdiction of PERB, while the MMBA remained separate, remained in place for over thirty years. In 1999, Professor Grodin commented that "[t]he fact that the MMBA has endured for so long without significant change is attributable in major part to the work of the courts."[31] Professor Grodin noted that since 1968, over 100 appellate decisions, including about a dozen by the California Supreme Court, had been issued interpreting various provisions of the MMBA.[32] However, Professor Grodin also noted that many significant legal questions remained unanswered, such as whether unions have a duty of fair representation to bargaining unit employees, whether unions can waive pre-existing contractual rights of employees, and how long an employer can defer bargaining after imposing terms and conditions on a union.[33]

Professor Grodin opined that these significant legal issues would be resolved by the courts in time, but that these issues were of the type that PERB would address in the first instance under the statutes it administered.[34] One month after Professor Grodin's article was published, SB 739 was introduced in the Senate by Senator Hilda Solis. SB 739 made two significant changes to the MMBA. First, it provided a mechanism for a union to receive "fair share" fees without the agreement of the employer as long as a majority of employees in the bargaining unit voted for such fees.[35] Second, with limited exceptions, it brought the MMBA under the jurisdiction of PERB. Governor Gray Davis signed SB 739 in 2000 and the law took effect on July 1, 2001.[36]

Prior to the addition of the MMBA, PERB's jurisdiction covered approximately 900,000 public employees distributed among 1,200 public employers.[37] The addition of the MMBA brought approximately 1,000,000 additional public employees and 5,000 additional public employers under PERB's jurisdiction.[38] Despite this dramatic increase in jurisdiction, PERB's workforce remained less than 40 employees state-wide.[39]

In the years following the enactment of SB 739, PERB's workload increased dramatically. In the four years prior to PERB taking jurisdiction of the MMBA, an average of 549 unfair practice charges were filed annually.[40] In the first year after the effective date of SB 739, there were 935 unfair practice charges filed.[41] In 2005, the number of unfair practice charges peaked at 1126 for the year.[42] By then, the preceding four-year average number of unfair practice charges had increased to 925 annually.[43]

Since PERB assumed jurisdiction of the MMBA, the Legislature has continued to periodically amend the statute. In 2001, Governor Davis signed AB 1281, which incorporated "card check" into the MMBA.[44] Under the NLRA, a union generally has to win an election in order to obtain recognition as the exclusive representative of a bargaining unit. Under AB 1281, public agencies under the MMBA are required to recognize a union as the exclusive representative if it can demonstrate majority support based on a signed petition, authorization cards, or union membership cards.[45] Thus, under a "card check" system, a union may obtain status as an exclusive representative without an election if it can gather support cards from a majority of the bargaining unit.

Another significant amendment to the MMBA occurred after Jerry Brown was elected Governor in 2010. In 2012, Governor Brown signed AB 646, which established "factfinding" under the MMBA.[46] Under AB 646, if the parties cannot reach agreement in bargaining, the union may require that the parties engage in factfinding.[47] In factfinding, any remaining disputes between the parties are submitted to a panel comprised of one member appointed by each party and a chairperson appointed by PERB.[48] The panel may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate.[49] Afterwards, the panel "shall make findings of fact and recommend terms of settlement, which shall be advisory only."[50] While factfinding had long been utilized under EERA and HEERA, the addition of factfinding represented a major change under the MMBA. Since 2012, there have only been a few minor amendments to the MMBA.

Starting in 2017, the Legislature appears to have taken a different approach to enacting changes to California's various collective bargaining statutes. Instead of enacting changes to each of the various collective bargaining statutes in California, the Legislature has been enacting new statutes covering all public employees. For example, in 2017, the Governor signed AB 119, which created the Public Employee Communication Chapter (PECC) in the Government Code.[51] This new law gives unions access to new employee orientation sessions and requires an employer to periodically provide employee contact information to the union.[52] However, instead of amending each of the statutes administered by PERB, such as the MMBA, the Legislature enacted the PECC as a stand-alone statute

that applies to all public employees under PERB's jurisdiction. In 2018, the Governor signed SB 866, which enacted another stand-alone statute, this time prohibiting public employers from deterring or discouraging public employees from becoming or remaining members of a union.[53] As with AB 119, SB 866 covers all of the public employees under PERB's jurisdiction.

Interestingly, it's been twenty-five years since the release of the Aaron Commission report recommending the adoption of a comprehensive collective bargaining statute in California for public employees. Does the passage of AB 119 and SB 866 indicate that the Legislature is finally open to the Aaron Commission's recommendation of a comprehensive statute? With the 50th anniversary of the MMBA, perhaps it's time for the Legislature to convene another commission to look ahead at the issues facing California's public employees and employers in the coming decades.

ENDNOTES

1. The MMBA is codified at Gov't Code §§ 3500–3511.
2. *A Union Education,* Wall St. J., Mar. 1, 2011.
3. https://www.nlrb.gov/who-we-are/our-history.
4. 29 U.S.C. § 152(2).
5. Steven Greenhouse, *Wisconsin's Legacy for Unions*, N.Y. Times, Feb. 22, 2014.
6. *Glendale City Employees' Assn., Inc. v. City of Glendale*, 15 Cal. 3d 328, 335 (1975).
7. *Pacific Legal Found. v. Brown*, 29 Cal. 3d 168, 176 (1981).
8. *Glendale, supra* note 6, at 335.
9. *Id.*
10. *See Margiotta v. Kaye*, 283 F. Supp. 2d 857, 860 (E.D.N.Y. 2003).
11. *Glendale, supra* note 6, at 336.
12. *Id.*; Gov't Code § 3505.
13. Gov't Code § 3505.
14. *See San Jose Peace Officer's Assn. v. City of San Jose*, 78 Cal. App. 3d 935, 947 (1978).
15. *Id.*
16. Gov't Code § 3505.1, as added by 1968 Cal. Stat. 1390, operative Jan. 1, 1969.
17. *Glendale, supra* note 6, at 336; Gov't Code § 3505.1.
18. Gov't. Code § 3502.
19. Gov't Code § 3506.
20. *See* California Public Sector Labor Relations, § 1.05 (2016); *see also* Philip Tamoush, *Local Option in the Administration of Public Sector Employment Relations: California Experience and Prospects,* California Public Employee Relations Program p. 1 (1977).
21. Philip Tamoush, *Local Option in the Administration of Public Sector Employment Relations: California Experience and Prospects,* California Public Employee Relations Program p. 12 (1977).
22. Joseph R. Grodin, *Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts,* 23 Hastings L.J. 719 (1972), *republished at* 50 Hastings L.J. 717 (1999).
23. *Id.*
24. *Pacific Legal Found.*, 29 Cal. 3d 168, 177 (1981).
25. *Id.*; Aaron Commission Report p. 6 (1973).
26. Aaron Commission Report p. 7 (1973).
27. *Pacific Legal Found., supra* note 24, at 177.
28. *Id.*
29. *Id.*
30. *Id.*
31. Joseph Grodin, *Author's Comments to Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts,* 50 Hastings L.J. 761 (1999).
32. *Id.*
33. *Id.*
34. *Id.*
35. Final Assembly Floor Analysis, Analysis of Senate Bill No. 739, as amended August 28, 2000.
36. *Id.*
37. 1999-2000 Annual Report of the Public Employment Relations Board (Oct. 2000).
38. 2001-2002 Annual Report of the Public Employment Relations Board (Oct. 2002).
39. *Id.*
40. 2000-2001 Annual Report of the Public Employment Relations Board (Oct. 2001).
41. 2001-2002 Annual Report of the Public Employment Relations Board (Oct. 2002).
42. 2004-2005 Annual Report of the Public Employment Relations Board (Oct. 2005).
43. *Id.*
44. Gov't Code § 3507.1.
45. *Id.*
46. Gov't Code §§ 3505.4, 3505.5, 3505.6.
47. Gov't Code § 3505.4.
48. *Id.*
49. *Id.*
50. Gov't Code § 3505.5.
51. Gov't Code § 3555.
52. Gov't Code §§ 3556, 3558.
53. Gov't Code § 3550.