



THE PUBLIC SECTOR

Unions attempt to close door on civic openness in negotiations

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As if bargaining in the public sector weren't rife enough with conflict, there's a movement afoot that is pitting "open government" forces against labor organizations. "Civic Openness in Negotiations" (COIN) names a relatively new policy initiative that requires, among other things, public disclosure of the content of labor negotiations and their true financial impact before any negotiated deal is considered or approved by the elected body. In a case now pending before an administrative law judge of the Public Employment Relations Board (PERB), the Orange County Employees Association hopes to convince PERB that the county's implementation of a COIN ordinance is an illegal "unfair practice" under the Meyers Milias Brown Act.

What is a COIN ordinance?

Five agencies have already implemented a COIN ordinance: Costa Mesa (2012), Beverly Hills (2014), Palos Verdes (2014), Fullerton (2014), and Orange County (2014). COIN ordinances take many forms, but Orange County's ordinance is particularly robust. It requires:

- (1) Retention of an independent labor negotiator to represent the county in labor negotiations unless a majority of the Board of Supervisors votes not to use an outside negotiator;
- (2) Presentation of a neutral fiscal impact analysis for review by the board and the public at least 30 days before the board considers an opening proposal in negotiations;
- (3) Public disclosure of the content of any prior offer or counteroffer that was presented by either party during negotiations;
- (4) Board members and their staff to report, in open session, any communications they have had with representatives of an employee organization;
- (5) Public disclosure of the proposed memorandum of understanding, including at least two board meetings for public discussion and comment before adoption; and
- (6) Public disclosure of the particulars of negotiations, including the participants' names and the dates, length, and location of negotiation sessions.

Union arguments and management responses

Anticipating negative public reaction, unions would prefer to keep the public unaware of what's happening in bargaining and of the true costs of their proposals. They would also prefer to preserve their ability to secretly lobby elected officials and their staff. The true reason for the association's challenge to the county's ordinance, however, is masked by a procedural argument. The association maintains that the county illegally refused to bargain with it—ironically, behind closed doors—before implementing the ordinance and that the ordinance elements purport to unilaterally dictate the time and manner of the collective bargaining process.

The perspective of public employers on this issue is twofold. First, as defined by the liberal PERB, the bargaining process can be and usually is protracted because even after full negotiations and a declaration of impasse, the employer can be required to go through an elaborate "fact-finding" process before it can legally implement its final offer. Requiring open negotiations would impede the county from implementing important public policy for many months.

Second, as the county points out, it had the right to implement all the elements of the COIN ordinance whether or not it adopted the ordinance. Labor law doesn't prevent an employer from publicly disclosing bargaining proposals or the resulting costs unless the employer has agreed to ground rules that require secrecy. Indeed, the California Public Records Act expresses a preference for public disclosure of information germane to government operations.

Even more compelling is the employer's right to select its own negotiator, to have the true costs of bargaining proposals analyzed by experts, and to mandate that public officials and their staff disclose their contact with unions on negotiation issues. Here's to hoping that the PERB administrative law judge will get it right! *Orange County Employees Association et al. v. County of Orange*, PERB Case Nos. LA-CE-934-M, LA-CE-935-M, and LA-CE-944-M.

Bottom line

PERB's union-friendly approach to labor disputes requires public employers to watch this case

carefully. Too often, PERB finds a way to legalize legislative initiatives adopted by public agencies. An adverse PERB decision would require the county to roll back its COIN ordinance until it bargains with the association and completes fact-finding. Don't expect public employers in climes that are more union-friendly than Orange County to jump to implement COIN ordinances. However, we see most if not all of the components of a COIN ordinance as "best

practices" that public employers can implement *ad hoc* without enacting a formal ordinance.



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