Case No. H052154

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

COUNTY OF SANTA CLARA,
Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent,

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521,
Real Party in Interest.

[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PETITIONER COUNTY OF SANTA CLARA

Appeal of Public Employment Relations Board
Decision No. 2900-M
(PERB Case No. SF-CE-1859-M)

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I. INTRODUCTION

This case raises critical issues about a public employer's obligations under the Meyers-Milias-Brown Act ("MMBA") when an external law places limits on the employer's ability to make any meaningful changes on matters, even if they may otherwise be the subject of required decisional bargaining. Respondent Public Employment Relations Board's ("PERB") Decision would require decisional bargaining prior to an action by the County Board of Supervisors even in situations, such as this case, where there is no statutory authority vested in the Board to effectuate any of the changes that would be the subject of negotiations between the parties in decisional bargaining.

PERB and Real Party in Interest Service Employees International Union Local 521 ("SEIU") largely downplay the consequences of PERB's Decision by framing it as narrow and limited. PERB describes its actions as nothing more than a "hold harmless" order, (PERB Resp. Br., p. 34). It asserts that the County's characterizations are "exaggerated" (*County of Santa Clara* (2024) PERB Dec. No. 2900-M [48 PERC ¶ 169]("Decision")), and minimizes the County's concerns about the Decision by describing them as a "parade of horribles." (PERB Resp. Br., p. 12.) In using this framing, PERB and SEIU do not address the significant ramifications of the precedent established in the Decision and its impact in future cases.

Indeed, the Decision has broad implications beyond the facts of this case. It has the potential to create significant deleterious impacts on counties' provision of indigent health services, implementation of other statutes that have critical time limitations, and supervision of the numerous categories of County employees who are required to maintain professional

licenses. The Decision also undermines the deference owed to the Legislature in its policy judgment concerning the independence of medical staff.

For these reasons, Santa Clara County's Petition for Writ of Extraordinary Relief should be granted.

II. ARGUMENT

A. The "narrow" remedy imposed by the Decision results solely from PERB's exercise of discretion in this case, leaving future cases subject to PERB's general rule that decisional bargaining over medical staff bylaws is required prior to a governing board's approval, and that PERB can remedy a violation by ordering rescission of the approval, to the detriment of hospital operations.

One of the ways PERB attempts to frame its Decision as having minimal impact is to emphasize that its remedy did not require the County to rescind its approval of the medical staff bylaws. Instead, in formulating a remedy to what it found to be an unlawful failure to engage in collective bargaining, PERB exercised its discretion to issue a narrower bargaining remedy. (See PERB Resp. Br, p. 23 ["Although the standard remedy for a decision bargaining violation includes restoring the status quo ante by invalidating the decision, the Board ordered a narrower remedy under the unusual circumstance of this case, requiring the County to hold SEIU-represented PAs harmless for failing to meet the certification requirement until good faith negotiations are complete."]; PERB Resp. Br., p. 12 ["[T]he Board exercised its discretion to issue this narrow bargaining remedy, which is most commonly ordered when an employer violated its duty to negotiate over the effects of a decision but was not required to negotiate over

the decision itself."].) PERB asserts that this narrow remedy should alleviate the "parade of horribles" described by the County as to the negative impacts on patient care that are at jeopardy when medical staff bylaws are not adopted.

There is nothing in the record, however, to suggest this same remedy would be provided in future cases. There is nothing in the Decision limiting PERB to a similar remedy when considering a charge that a public agency failed to bargain prior to approving medical staff bylaws. The narrow remedy was issued here due to "unusual circumstances," but what makes the circumstances unusual is not explained. Instead, PERB's remedial decision is arbitrary, with no standard to define when PERB will require that an approval of medical bylaws be invalidated and when it will merely require the governing board to stay enforcement of the bylaws against employees until the governing board bargains over the decision to implement the bylaws.

Further, even if it is true that PERB acted narrowly here, that does not impact the erroneous analysis resulting in a finding that Santa Clara County violated the MMBA. The purpose of a published Decision is to provide guidance to counties and other public employers of their duties under the MMBA. And the guidance provided here is murky and vague. It requires governing boards of public hospitals to engage in decisional bargaining "to the extent of their discretion" prior to approving medical staff bylaws. But the Decision is decidedly less clear about exactly what aspects of medical staff bylaws are within the discretion of the governing board and are therefore subject to bargaining. PERB's statement that the

County Board of Supervisors "has the discretion to withhold its approval of the Medical Staff bylaws so long as its decision is not unreasonable" (PERB Resp. Br., p. 30) is imprecise and unhelpful.

The Decision establishes a Sword of Damocles that falls whenever PERB might want it to. This places governing boards in the position of potentially disrupting their hospital's accreditation and licensing no matter which course they choose: failing to bargain over issues that PERB later determines to have been within their discretion could result in possible rescission of the bylaws approval, but failing to approve bylaws on the basis of demands raised in bargaining that the Board has no control to change could leave the medical facilities without the bylaws the medical staff has determined are required, in violation of hospital licensing laws and the Medical Practice Act.

This threat creates significant problems not only for Santa Clara County, as highlighted in its briefs (see, e.g., County Opening Br., pp. 14-15,46), but also for other counties that either operate their own hospitals or rely on local hospital districts to meet their indigent health care obligations, as discussed more fully below.

B. The Decision creates the potential to disrupt accreditation and licensing not only at County Public Hospitals, but also at facilities operated by Local Hospital Districts, which many counties rely upon to provide indigent health services.

Many California counties utilize local hospital districts to provide the indigent health services required by Welfare and Institutions Code section 17000, which includes the provision of emergency and medically necessary care to indigent residents,

ensuring that such subsistence medical services care is provided promptly and humanely, even in the face of fiscal challenges. (*Fuchino v. Edwards-Buckley* (2011) 151 Cal.App.4th 16.)

There are 77 hospital care districts in California, 54 of which are in rural areas. (Lauran DeLaunay Miller, *Health Care Districts Hold a Lot of Power. Here's What to Know Before You Vote,* California Health Report (Oct. 9, 2024).)[1] Each of these districts is governed by an elected five-member board of directors. (Health & Saf. Code, § 32100.) Local hospital districts are subject to the Medical Practice Act, which is the statute that includes the requirement of medical staff self-governance found in Business and Professions Code section 2282.5. (*Conrad v. Medical Board of California* (1996) 48 Cal.App.4th 1038.) Local hospital districts are also subject to the MMBA. (Gov. Code, § 350, subd. (c); *El Camino Hospital District* (2009) PERB Dec. No. 2033-M [33 PERC ¶ 93]; *Salinas Valley Memorial Hospital District* (2020) PERB Dec. No. 2689-M [44 PERC ¶ 119].)

PERB's Decision would therefore apply to local hospital district governing boards as well counties with hospitals, imposing upon them an obligation to meet and confer over the decision to approve medical staff bylaws prior to adoption, at least as to those items "within their discretion." The district governing board does so under threat that PERB can revoke the approval later if a subsequent review of that meet and confer process results in a determination that

[1] Available at: https://www.calhealthreport.org/2024/10/09/health-care-districts-hold-a-lot-of-power-heres-what-to-know-before-you-vote/ (last accessed on July 8, 2025).

the governing board failed to meet its collective bargaining obligations. As explained by the County, such revocation would put licensure and accreditation in jeopardy in those local hospital districts, undermining the mechanism used by many counties, including those in rural areas, for providing indigent health care.

C. The Decision's analysis on harmonizing external laws with the MMBA is unworkable when applied to other statutory schemes governing programs and services delivered by counties.

As articulated in the County's brief, if collective-bargaining obligations cannot be harmonized with the obligations of an underlying statutory scheme, then the actions taken by the public entity to comply with the statutory scheme falls outside the scope of representation and the County has no duty to bargain over it. PERB's harmonization theory in this Decision, however, would makes it hard to identify any statute that would be incompatible with the MMBA. By finding an obligation for decisional bargaining here, where PERB asserts an ill-defined "certain discretion" over medical staff bylaws in the face of clear legislative directives to the contrary (Decision, p. 16), PERB has created the possibility that other statutes with timelines that make decisional bargaining unworkable or that have savings clauses requiring the County to comply with "all applicable laws" can be harmonized with the MMBA.

It is important to consider how this principle would apply outside of the context of this case. Juvenile justice facilities provide one example. The Board of State and Community Corrections (BSCC) is required to conduct a biennial inspection of each jail,

juvenile hall, and other similar secure youth treatment facilities in the State and promptly notify the facility operator of any noncompliance with BSCC minimum standards for juvenile facilities. (Welf. & Inst. Code, § 209, subd. (a)(3)(A).) From there, things move quickly. From the time the Initial Inspection Report (IIR) detailing areas of noncompliance is issued to the Facility Manager and a county's Chief Probation Officer, the local agency—usually a subcomponent of a county—must develop and submit a Corrective Action Plan (CAP) to the BSCC within 60 days for approval. (BCSS, *Welfare and Institutions Code section 209 (d) Corrective Action Plan Submission, Review, and Approval Process Outline of the IIR Issuance* (2024).)[2] That CAP must explain how the issues of noncompliance will be resolved over the next 90 days. (*Ibid.*)

If the CAP is not timely submitted or not approved, or if the BSCC determines that the CAP implementation did not resolve the issues of noncompliance within 90 days of the CAP approval, the facility may be determined unsuitable and prohibited for use for the confinement of minors. (*Ibid;* Welf. & Inst. Code, § 209, subd. (a)(4).) In other words, a county can lose the ability to confine minors at its juvenile detention facility within a matter of weeks after receiving notice of noncompliance.

The types of noncompliance issues can include things like staffing, the frequency of safety checks, and staff training and

[2] Available at: https://www.bscc.ca.gov/welfare-and-institutions-code-section-209-d-corrective-action-plan-submission-review-and-approval-process-outline/ (last accessed on July 8, 2025).

documentation of training. (See, e.g., BSCC, *Juvenile Items of Noncompliance* (Feb. 5, 2024).)[3] BCSS advises that examples of corrective actions that can be included in the CAP include updating policies and procedures, staff training, and recruiting or reassigning staff. (BCSS, *Welfare and Institutions Code section 209 (d) – Corrective Action Plan Approval Process.*)[4] Due to the nature of the services, it is perhaps not surprising that many of the potential issues of noncompliance touch on issues that may well also affect employment at these facilities.

The noncompliance issues documented in the IIR relate to specific standards adopted by BSCC. (15 Cal. Code Reg. § 1300 et seq.) The County must move quickly to adopt a CAP that complies with those standards and implements any BSCC-recommended actions. Given the aggressive timelines, the serious consequences of failing to meet the timelines and of failing to implement the required changes, and the authority of BSCC to identify the corrective actions that must be made, Welfare and Institutions Code section 209 is an external law that might not be able to be harmonized with the MMBA's requirement to collectively bargain decisions related to the CAP before it is submitted. Decisional bargaining prior to submission would just not be possible in the time allowed by statute and BSCC guidelines. Yet the harmonization standard set out in this

[3] Available at: https://www.bscc.ca.gov/wp-content/uploads/2024/02/Juvenile-_-Adult-Items-of-Noncompliance-2-5-2024.pdf (last accessed on July 8, 2025).

[4] Available at: https://www.bscc.ca.gov/wp-content/uploads/Attachment-G-1-CAP-Review-and-Approval-Process-WIC-209d-Table.pdf (last accessed July 8, 2025).

Decision suggests that decisional bargaining would still be required, presumably using a similarly vague "to the extent the statutory scheme allows" standard.

In sum, even if time is not of the essence in this particular case, there are many situations where external law would prevent decisional bargaining based on the time allowed. Yet under the Decision, when time is severely limited, or it is unclear what authority is available to the Board of Supervisors to act, or there is a vague reference to a Board's requirement to comply with other applicable laws, PERB can "harmonize" the MMBA and order bargaining to whatever undefined and unclear level it deems permissible under the statutory structure. This is an untenable result that requires reversal of the PERB Decision.

D. The Decision creates confusion over decisional bargaining requirements related to any county employee with licensing requirements that are set by an external body.

This case also has implications beyond physician assistants employed by the County of Santa Clara. Counties employ a wide array of professionals that are required to possess licenses or other credentials for which the qualification criteria and maintenance standards are established and monitored by bodies other than the County. This includes, but is certainly not limited to, registered nurses (licensed by the California Board of Registered Nursing (Bus. & Prof. Code, § 2700 et seq.)), licensed vocational nurses (licensed by the Board of Vocational Nursing and Psychiatric Technicians (Bus. & Prof. Code, § 2841)), clinical social workers (LCSWs) (licensed by the California Board of Behavioral Sciences (Bus. & Prof. Code, § 4996.1; Cal. Code Regs., tit. 22, § 77011.2));

substance abuse counselors (see Cal. Code Regs., tit. 9, § 3015), peace officers (certified by the California Commission on Peace Officer Standards and Training (see Pen. Code, § 83.24)), engineers and land surveyors (licensed by the California Board for Professional Engineers, Land Surveyors, and Geologists (Bus. & Prof. Code, § 6730)), and attorneys (licensed by the State Bar of California (Bus. & Prof. Code, § 6126).

As the County notes, there is a distinction between decisions made by these external organizations as to licensing requirements and the indirect nature of those decisions' effects on employment. To be sure, counties do not play a role in approving licensing changes implemented by the organizations listed above. But these positions provide an apt comparison for illustrating the flaw in the position taken by PERB and SEIU here. THe MMBA cannot reasonably be read to require collective bargaining over elements of a person's working environment imposed by decisions that an employer does not control. There may be a need to bargain over the *effects* of changes to licensing requirements on employees, but it makes no sense in this context to require *decisional* bargaining when the employer is not authorized by statute to make changes to the decisions being made.

E. The Decision fails to provide due deference to the Legislature's determination that hospital governing bodies should not interfere with medical staff determinations.

As the County correctly argues, the Legislature has made clear in language affirmatively voted on by the full Legislative body and signed by the Governor that a medical staff has an independent right of self-governance free from interference from the governing body except for under the most limited of circumstances. Under California law, the State

Legislature is entitled to significant deference in its policy determinations, a principle that must be recognized by both administrative agencies and the courts. This deference is rooted in the separation of powers doctrine, which ensures that the legislative, executive, and judicial branches operate within their respective spheres of authority. (*Kawasaki Motors Corp. v. County of Orange* (1983) 146 Cal.App.3d 780, 784; *Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015) 243 Cal.App.4th 538, 554 ["It is not our place to gainsay the Legislature's judgment on which policies are better for the state; those policy decisions rest initially—and solely—with the Legislature."].)

The California courts have consistently held that legislative determinations are entitled to deference due to the Legislature's constitutional role in making policy decisions. In *Schettler v. County of Santa Clara* (1977) 74 Cal.App.3d 990, the court emphasized that the Legislature's findings, when reasonably based, are largely immune from judicial second-guessing. The court stated, "The cases uniformly hold that the courts should give due weight and deference to legislative judgment; and where, as here, the findings of the Legislature have a reasonable basis, the question of what constitutes a legitimate public purpose or public policy is largely one for the Legislature which may not be second-guessed, much less disturbed by the reviewing court." (*Id.* at p. 999.) Similarly, in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, the California Supreme Court underscored that courts must approach policy determinations with great care and due deference to the judgment of the legislative branch to avoid judicial policymaking. (*Id.* at p. 76.)

PERB erred in failing to afford such policy deference here. Rather than accepting the fully approved, though uncodified, statutory language

(which as the County accurately notes is distinguishable from unadopted legislative history) that unmistakably limits the Board of Supervisor's discretion in approving medical staff bylaws, PERB provided its own interpretation of the Board of Supervisor's role in the bylaws adoption. This court should not permit the error to continue.

III. CONCLUSION

For all these reasons, Amicus Curiae urges this Court to grant Santa Clara County's Petition for Writ of Extraordinary Relief and reverse the PERB decision requiring the County to engage in decisional bargaining.

Dated: July 11, 2025

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 3,667 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of July, 2025 in Sacramento, California.

Respectfully submitted,

/s/ *Jennifer B. Henning*
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