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Public Employment Relations Board Has Initial Jurisdiction Over Public Entity's Claims That A Strike By Some Or All Of Its Employees Is Illegal

In *City of San Jose v. Operating Engineers Local Union No. 3*, (--- Cal.Rptr.3d ----, 2010 WL 2607128, Cal., July 1, 2010), the California Supreme Court considered whether a public entity that believes a threatened strike by its employees will be unlawful because it will create a substantial and imminent threat to public health and safety must first file an unfair labor practice complaint with the Public Employment Relations Board ("PERB") and await PERB's adjudication of its complaint before seeking an injunction from a court to prohibit the strike. The Supreme Court held PERB has initial jurisdiction over the claim by a public entity that a strike is illegal and the "public entity must exhaust its administrative remedies before PERB before seeking judicial relief unless one of the recognized exceptions to the exhaustion of administrative remedies requirement is established."

Facts

The Meyers-Milias-Brown Act ("MMBA") governs labor relations between most local public entities and their employees. The MMBA "recognizes the right of public employees to bargain collectively with their employers over wages and other terms of employment." PERB is authorized to adjudicate unfair labor practice charges under several public employee/ employer labor relations acts, including the MMBA. Generally, both the agencies and employees must exhaust their administrative remedies under the MMBA before seeking relief from a court. Depending upon the terms of the existing labor contracts in place, generally public employees are allowed to go on strike unless the striking employees' jobs are essential to public welfare. However, as is the case here, employers and employees may disagree about whether an "employee's job is so essential that the employee may not legally strike."

Operating Engineers Local Union No. 3

Note:

This case was referenced in a 2011 appellate court decision. Please see our Legal Alert entitled, "[Action For Breach Of Duty Of Fair Representation Subject To Public Employment Relation Board's Jurisdiction](#)", March 30, 2011.

("Union") represents over 800 full-time employees of the City of San Jose ("City"). Union and City began negotiating a new labor contract in January 2006 because the existing contract was set to expire on April 14, 2006. Union agreed it would give City 72 hours notice before engaging in a work stoppage. On May 30, 2006, Union notified City that a stoppage could occur any time after June 2, 2006. City told Union it was going to seek a court order to prohibit a stoppage or strike because City claimed Union members performed services essential to public health and safety.

Union filed an unfair labor practice charge with PERB in which it alleged City's threatened action in state court would: (1) interfere with Union's right to represent its members; (2) interfere with "the rights of its members to participate in activities of an employee organization;" and, (3) breach "the City's obligation to meet and confer with the Union in good faith." City filed a complaint in the superior court on June 1, 2006, to enjoin 110 of its employees from participating in a work stoppage. City asserted that a stoppage would disrupt the operation and maintenance of a plant that treats waste and sewage water, impair the maintenance and repair of traffic signals and streetlight poles, and impair its ability to service facilities that support communications among emergency personnel.

The superior court denied the relief requested by City. The court found City had failed to exhaust its administrative remedies because it

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did not first seek relief from PERB, which the court found had exclusive jurisdiction over the matter. City sought review of the superior court's decision in the court of appeal. The court of appeal issued a stay prohibiting a strike. Although the parties later ratified a labor agreement and the appeal became moot, the court of appeal addressed the issues presented on appeal because they were of statewide importance. The court of appeal held "PERB 'has exclusive jurisdiction to determine whether particular public employees covered by the MMBA have the right to strike in cases that implicate the MMBA."

Decision

The Supreme Court affirmed the decision of the court of appeal. The Supreme Court stated the question before it as follows: "When a public employer is of the view that a threatened strike by certain public employees will endanger the public welfare, must it generally first seek relief from PERB before asking a superior court for injunctive relief?" The Court answered the question in the affirmative. The Court found that "[t]he Legislature has expressly vested in PERB initial jurisdiction over claims of unfair labor practices arising under the MMBA." Because a "claim that a threatened public employee strike is illegal generally constitutes an unfair labor practice claim, the claim comes within PERB's initial jurisdiction."

The Legislature enacted the MMBA in 1968 to authorize public entities and labor entities to confer and reach binding agreements on wages, hours, and working conditions. PERB was established in the 1970s. Initially, PERB only adjudicated unfair labor practices under the Educational Employment Relations Act ("EERA"). The Legislature extended PERB's jurisdiction in 2000 to cover matters arising under the MMBA. Neither the EERA nor the MMBA specifically address whether public employees have a legal right to strike. However, the Supreme Court has previously held that "strikes by public employees are not unlawful at common law unless or until it is clear that such a strike creates a substantial and imminent threat to the health or safety of the public." The question of "whether the public interest overrides the basic right to

strike" must be determined on a case-by-case basis.

Government Code section 3509, subdivision (b), provides in relevant part that a complaint alleging a MMBA violation "shall be processed as an unfair practice charge by [PERB]. *The initial determination as to whether the charge of unfair practice is justified* and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the *exclusive jurisdiction* of [PERB]." The enactment of section 3509 "removed 'from the courts their initial jurisdiction over MMBA unfair practice charges . . . and vested such jurisdiction in PERB.'" The Court held that the enactment of section 3509 vests "PERB with exclusive initial jurisdiction over public employee strikes that may involve claims of unfair labor practices under the MMBA."

City argued "that because the right of public employees to strike is founded in common law, the statute vesting initial jurisdiction in PERB for claims of unfair practices arising under the MMBA . . . is inapplicable to public employees strikes." The Court rejected City's argument. The Court concluded "that when in 2000 the Legislature transferred jurisdiction over the MMBA from the courts to PERB it did so in light of this court's existing case law," which established that "[p]ublic employees have a right to strike unless it is clearly shown that there is a substantial and imminent threat to public health and safety." PERB has exclusive initial jurisdiction over activities "'arguably protected or prohibited' by public employment labor law . . . and PERB's exclusive initial jurisdiction extends to remedies for strikes considered to be unfair labor practices."

City also argued "that because the subject of public health and safety has historically been a matter of local responsibility . . . the local concern doctrine should be applied in cases that, as here, involve strikes by public employees whose services are essential to public welfare, vesting in the courts exclusive jurisdiction over such cases." The Court found the doctrine inapplicable because "there was no evidence that a strike by the City's public employees posed an immediate threat to civil order."

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inadequate.”

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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The Court held that “a claim by a public entity that a proposed strike by public employees includes employees who perform services essential to the public welfare is generally subject to PERB’s initial jurisdiction.” The Court considered whether “a public entity may nevertheless bypass that administrative forum by applying to a court for relief if it can establish a recognized exception to the doctrine of exhaustion of administrative remedies”

The doctrine of exhaustion of administrative remedies provides that where administrative remedies are available, a party must generally exhaust those remedies before seeking judicial relief. The doctrine, however, does not apply when the administrative remedy is not adequate such as when “the administrative procedure is too slow to be effective . . . when irreparable harm would result by requiring exhaustion of administrative remedies before seeking judicial relief . . . or when it is clear that seeking administrative remedies would be futile.” The Court, however, found “no legal obstacle to applying the exceptions to the doctrine of exhaustion of administrative remedies to matters that are within PERB’s initial jurisdiction.”

City contended the PERB administrative “remedy can never be effective when a proposed strike by public employees includes employees whose services may be essential to protect the public welfare.” The Court disagreed. Here, Union gave City at least 72 hours notice that a strike was possible. The Court concluded, “Thus, even if we assume that injunctive relief was appropriate here, there was sufficient time for the City to have asked PERB for injunctive relief and sufficient time for PERB to have decided whether to apply for such relief in court.”

The Court held, “Whenever possible, labor disputes asserting unfair labor practices under the MMBA should be submitted first to PERB rather than a court.” However, “[i]f an exception to the doctrine of exhaustion of administrative remedies is claimed, the trial court should afford due deference to PERB and issue injunctive relief only when it is clearly shown that PERB’s remedy would be