



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

RECEIVED

By PERB SFRO at 4:43 pm, Jun 24, 2020

DO NOT WRITE IN THIS SPACE:

Case No:

SF-CE-1806-M

Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

If so, Case No.

NO

1. CHARGING PARTY:

EMPLOYEE

EMPLOYEE ORGANIZATION

EMPLOYER

PUBLIC¹

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of
person filing charge:

Telephone number:

E-mail Address:

Fax No.:

e. Bargaining unit(s)
involved:

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

EMPLOYER

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of
agent to contact:

Telephone number:

E-mail Address:

Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes _____ No _____

6. STATEMENT OF CHARGE

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
 - Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
 - Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
 - Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
 - Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
 - Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
 - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
 - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: _____

- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge):** _____

- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent’s conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)*

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on _____ (Date)

at _____ (City and State)

(Type or Print Name)



(Signature)

Title, if any: _____

Mailing address: _____

Telephone Number: _____ E-Mail Address: _____

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of _____,
State of _____. I am over the age of 18 years. The name and address of my
Residence or business is _____

On _____, I served the _____
(Date) *(Description of document(s))*

_____ in Case No. _____
(Description of document(s) continued) *(PERB Case No.)*

on the parties listed below by (check the applicable method(s)):


- placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- personal delivery;
- facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).
- electronic service (e-mail) - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) to the electronic service address(es) listed below on the date indicated. *(May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)*

(Include here the name, address, e-mail address and/or fax number of the Respondent and/or any other parties served.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on _____, at
(Date)

(City) *(State)*

(Type or print name)


(Signature)

6.d Statement of Charge

STATEMENT OF VIOLATION

Charging Party, Vallejo Police Officers' Association ("VPOA"), is the exclusive representative for employees of the City of Vallejo ("Respondent" or "City") who work as sworn peace officers in the classifications of Police Officer, Police Corporal, Police Sergeant, Police Lieutenant, and Police Captain. The collective bargaining relationship between the parties is governed by the provisions of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3500 *et seq.* In this charge, VPOA alleges that Respondent, failed to provide the VPOA with advance written notice of significant changes to members' wages, hours, and other terms and conditions of employment, and thereafter failed to bargain in good faith in violation of Government Code sections 3504.5 and 3505. By its conduct, the City has denied the VPOA of its right to represent its members in violation of Government Code section 3503, and denied its members the right to participate in the activities of the employee organization of its choosing in violation of Government Code section 3502. Accordingly, Respondent's actions constitute violations of the MMBA as specified in Government Code section 3506.5(b),(c) and PERB Regulation 32603 (b), (c), (d).

BACKGROUND

1. The VPOA is the recognized exclusive employee organization, as that term is defined in Government Code section 3501(b), for City employees of the Vallejo Police Department ("Department") working in the following classifications: Police Officer; Police Corporal; Police Sergeant; Police Lieutenant; and Police Captain
2. Respondent is a charter city subject to the MMBA as a public agency as defined in Government Code section 3501(c).
3. The VPOA and the City are parties to a Memorandum of Understanding ("MOU").
4. The recognition clause in Section 1 of the MOU states in relevant part:

The City recognizes the Vallejo Police Officers' Association as the representative in matters pertaining to wages, hours and other conditions of employment for those employees within the representation unit composed of the classified uniformed positions of Police Officer, Corporal, Sergeant, Lieutenant, and Captain.

Vallejo Police Officers' Association

6.d Statement of Charge

Page 2

5. The zipper clause set forth in Section 33 of the MOU states in relevant part:

All existing benefits presently enjoyed by employees within the unit represented by the Association shall remain in full force and effect during the life of this Agreement, except as they may be amended by this Agreement.

The Public Information Officer Assignment

6. Since its inception, the role of Vallejo Police Department Public Information Officer ("PIO") has always been an assignment performed by a sworn member in a classification represented by the VPOA.
7. Among other duties and responsibilities, the PIO is a high-visibility assignment as the incumbent serves as the face of the Department for press conferences, is the primary point of contact for media inquiries, is responsible for press releases, and managing other forms of media for the Department.
8. In or about October of 2019, the City announced a new miscellaneous (non-sworn) classification titled Police Public Information Analyst.
9. As the City did not provide notice or an opportunity to meet and confer regarding the Police Public Information Analyst, the VPOA was unaware of the purpose or role of the classification, raising concerns with the VPOA leadership regarding the new position's role relative to the existing PIO assignment.
10. VPOA President Michael Nichelini raised these specific concerns with Chief Shawny Williams on numerous occasions, with Chief Williams dismissively describing the new position as simply an "analyst" that would assist the sworn PIO in the performance of that employee's duties and responsibilities.
11. On or about May 11, 2020, Chief Williams sent an email welcoming the newly hired Police Public Information Analyst, Brittany Jackson, stating that she will "take on [the] Vallejo Police Department's newest role as Press Information Officer."
12. On or about May 26, 2020, the City issued a press release welcoming Brittany Jackson as the new "Vallejo Police Department Public Information Officer."
13. These titles were unmistakably omitted in the City and Department's prior communication with the VPOA, suggesting that the City either sought to mislead the public in describing Ms. Jackson's role, or that the Department purposefully mislead the VPOA in the months leading up to Ms. Jackson's employment.
14. In response to the Chief's email and the City's press release, VPOA President Nichelini repeatedly asserted the VPOA's rights under the MMBA, but the City refused to clarify or amend Ms. Jackson's role or meet and confer with the VPOA.

Vallejo Police Officers' Association

6.d Statement of Charge

Page 3

15. Since announcing Ms. Jackson's employment with the City, she has publicly assumed the title of PIO and relieved Captain Jason Potts of his duties and responsibilities as the Vallejo Police Department's PIO.
16. In response to the City's unilateral action and failure to respond to the VPOA's demands, on May 28, 2020, the VPOA filed a formal grievance and cease and desist notice with Chief Williams. As of filing this Unfair Practice Charge, the City has failed to take remedial action in response to the VPOA's grievance and cease and desist notice.

The Administrative Sergeant Assignment

17. The Administrative Sergeant assignment is responsible for recruiting candidates to serve as Police Officers for the City, historically leading a team of other sworn employees in VPOA-represented classifications to attend various recruiting venues to contact, inform, and attract potential academy attendees, current academy participants, and lateral police officers.
18. Due to the nature of the work, the demand for public safety personnel across the County, within the State, and throughout the Bay Area, and the limited pool of qualified candidates, the market for recruiting law enforcement professionals is extraordinarily competitive.
19. The California Commission on Peace Officer Standards and Training ("POST") was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.
20. Commission Regulation 1952 stipulates that every peace officer be interviewed prior to employment to determine the person's suitability for law enforcement service.
21. POST provides agencies with a handbook titled "Interviewing Peace Officer Candidates: Hiring Interview Guidelines" to assist in all phases of the interview process.
22. As a complement to the interview guidelines, POST has a secure Oral Interview Question Bank containing hundreds of questions categorized by the six factors that are required to be assessed during the oral interview process.
23. The Department has historically followed POST guidelines to select qualified candidates.
24. The City manages its application process through NeoGov, an online portal that applicants use to contact the City for possible employment at the Department.
25. The Administrative Sergeant uses NeoGov to evaluate applicant qualifications, contact applicants for follow-up information, and direct candidates as they proceed through the application process.
26. In February of 2020, the Department introduced several new temporary employees to assist the City's current recruitment team lead by the Administrative Sergeant. It was

Vallejo Police Officers' Association

6.d Statement of Charge

Page 4

understood that these temporary employees would serve as “recruiters” that would help the Administrative Sergeant expand the recruiting efforts for the Department by attending a broader range of recruiting venues.

27. The VPOA has been informed that the temporary employees are now working beyond the scope of simply assisting the Administrative Sergeant in recruiting, and have been directly involved in developing new policy, participating in oral panels, generating non-POST-approved interview questions and other duties and a responsibilities that have historically been assigned to the Administrative Sergeant.
28. The Administrative Sergeant’s access to NeoGov has also been restricted, thereby further reducing the Administrative Sergeant’s ability to perform the duties and responsibilities of the assignment.
29. The City has not provided the VPOA with notice or an opportunity to meet and confer on these unilateral changes to the Administrative Sergeant’s assignment and civilianizing and reassignment of union work.
30. The City has not provided the VPOA with notice or an opportunity to meet and confer on the unilateral changes to the application process or procedure

RESPONDENT’S FIRST UNFAIR LABOR PRACTICE

Failure to Provide Advance Written Notice

Violation of Government Code §§ 3504.5, 3506.5(b) and PERB Regulation 32603(b)

The City has a statutory obligation to “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...and shall give the recognized employee organization the opportunity to meet with the governing body....” (Gov. Code § 3504.5(a).) Here, Respondent failed to provide advance written notice to the VPOA despite significant changes to matters that are within the scope of representation and subject to the MMBA meet and confer requirements.

RESPONDENT’S SECOND UNFAIR LABOR PRACTICE

Failure to Meet and Confer in Good Faith

Violation of Government Code §§ 3505, 3506.5(b) and PERB Regulation 32603(c)

The City has a statutory obligation to “meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations...and...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.” (Gov. Code § 3505, emphasis added.) Here, the Respondent failed to meet and confer with the VPOA, and with respect to the PIO assignment, despite multiple verbal *and* written requests from the VPOA to meet and confer, refused to do so. Rather than abide by the mandates of the MMBA, the City unilaterally assigned union work outside of the bargaining unit to civilian employees.

RESPONDENT'S THIRD UNFAIR LABOR PRACTICE

Denial of VPOA's Right to Represent Its Members

Violation of Government Code § 3503 and PERB Regulation 32603(b)

The City has a statutory obligation to provide “[r]ecognized employee organizations...the right to represent their members in their employment relations with public agencies.” (Gov. Code § 3503) Here, the City unilaterally implemented significant changes in working conditions, thereby depriving the VPOA from being able to exercise its statutory right to represent its members. The VPOA's rights have been further restricted by the City's refusal to restore the status quo ante in violation of its statutory duty to meet and confer in good faith.

RESPONDENT'S FOURTH UNFAIR LABOR PRACTICE

Denial of Public Employees' Right to Participate in Union Activities

Violation of Government Code § 3502 and PERB Regulation 32603(a) and (d)

The City has a statutory obligation to provide “public employees...the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.” (Gov. Code § 3502) The City's unilaterally implementation of this policy has denied VPOA members of their right to participate in the VPOA's statutory activities.

REQUESTED REMEDY

Charging Party requests that PERB grant the following remedies for Respondent's violations of the MMBA:

1. An order directing Respondent City of Vallejo to restore the status quo ante by requiring it to publicly retract its May 26, 2020 press release welcoming Brittany Jackson as the new "Vallejo Police Department Public Information Officer."

2. An order directing Respondent City of Vallejo to restore the status quo ante by requiring it to publicly recognize Captain Potts (or another VPOA member) as the PIO.

3. A finding that Respondent City of Vallejo has failed to provide notice to the VPOA of proposed changes to matters within the scope of representation as provided in Government Code section 3504.5.

4. A finding that Respondent City of Vallejo has failed to satisfy its obligation to meet and confer in good faith as provided in Government Code section 3505.

5. A finding that Respondent City of Vallejo has failed to satisfy its obligation to grant VPOA the right to represent its members in employment relations as provided in Government Code section 3503.

6. A finding that Respondent City of Vallejo has failed to satisfy its obligation to grant public employees the right to participate in employee organization activities of their choosing for the purpose of representation on all matters of employer-employee relations as provided in Government Code section 3502.

7. An order directing Respondent City of Vallejo to post notice of their unlawful conduct to ensure that all employees affected by the Board's decision and order are notified of their rights.

8. For such other and further relief PERB deems as an appropriate remedy for Respondent's unlawful conduct.