



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,

Charging Party,

v.

COUNTY OF MONTEREY,

Respondent.

Case No. SF-CE-2050-M

PERB Decision No. 2919-M

September 10, 2024

Appearances: Weinberg, Roger & Rosenfeld by Katharine R. McDonagh, Attorney, for Service Employees International Union, Local 521; Susan K. Blicht, Acting County Counsel, and Janet L. Holmes, Assistant County Counsel, for County of Monterey.

Before Banks, Chair; Krantz and Nazarian, Members.

DECISION¹

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) on the parties' exceptions to a proposed decision of an administrative law judge (ALJ). The complaint alleged that Respondent County of Monterey violated the Meyers-Milias-Brown Act (MMBA) by (1) unilaterally reducing rest breaks, and (2) directly issuing memoranda and forms to employees represented by Charging Party Service Employees International Union, Local 521 (SEIU), thereby

¹ PERB Regulation 32320, subdivision (d) authorizes the Board to determine whether a decision, or any part thereof, shall be designated as non-precedential. Having considered the regulation's criteria, we designate this decision as non-precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

bypassing, undermining, and derogating SEIU's authority.² After a formal hearing, the ALJ found violations on both claims, and both parties excepted.

Based on our review of the proposed decision, we affirm the ALJ's factual findings and legal conclusions. We also clarify and adjust the remedial order in accordance with the parties' exceptions.³

FACTUAL AND PROCEDURAL BACKGROUND⁴

The County is a public agency within the meaning of Government Code section 3501, subdivision (c) and PERB Regulation 32016, subdivision (a). SEIU is a recognized employee organization within the meaning of Government Code section 3501, subdivision (b) and an exclusive representative within the meaning of PERB Regulation 32016, subdivision (b). SEIU represents permanent and seasonal employees in bargaining units F (Supervisory Employees), H (Health Employees), J (General Employees), and K (Social Services Employees), as well as a bargaining unit consisting of temporary employees in SEIU classifications.

The County operates Natividad Medical Center (NMC), which includes a hospital and associated outpatient medical clinics. Employees from some of SEIU's

² The MMBA is codified at Government Code section 3500 et seq.

³ The County requested oral argument. The Board typically denies such requests if there is an adequate record, the parties had a reasonable opportunity to present briefs, and the issues before the Board are sufficiently clear that oral argument is unnecessary. (*City of Culver City* (2020) PERB Decision No. 2731-M, p. 2, fn. 2.) Based on these criteria, we deny the request for oral argument.

⁴ We draw our factual background in significant part from the proposed decision.

bargaining units work at NMC, and most of those employees work eight-hour shifts, though some work 12-hour shifts.

SEIU and the County are parties to a memorandum of understanding (MOU) with a term of July 1, 2021 through June 30, 2024. Article 10 is titled “REST and MEAL PERIODS.” Section 10.1 pertains to rest periods and states in relevant part:

“A full-time work day is eight (8) sequential hours of work exclusive of a meal period of at least thirty (30) minutes. Unless the employee requests otherwise, there will be a rest period of 15 minutes during each four (4) hours of continuous work subject to supervisor approval and department policy. Employees working twelve (12) hour shifts shall be granted a rest period of ten (10) minutes during each four (4) hours of work. Rest periods cannot be taken at the beginning or end of a shift or combined with a meal period unless approved in advance.

“A rest period is County paid time and considered hours worked for pay purposes.

“It is the responsibility of each employee to take a rest period.”

Section 10.3 pertains to meal periods and states in relevant part:

“A meal period is an off-duty time, away from all work assignments. Workers shall be granted a meal period of not less than thirty (30) minutes nor more than sixty (60) minutes. The meal period shall not be compensated time and every attempt shall be made to provide a meal period away from a worker’s duties. In the event that this is not possible, the non-exempt workers will be compensated for that time in accordance with the applicable Overtime Eligible Employees sections of this Agreement.”

Prior to 2023, if employees had to work through their unpaid meal periods, they logged the missed meal periods on a specified form so as to be paid for them. In some cases, supervisors allowed employees to leave their shifts early in lieu of

compensation. Another form was available for 12-hour shift employees to waive their second meal periods.

Senate Bill (SB) 1334

On September 29, 2022, the Governor signed SB 1334 into law, adding section 512.1 to the Labor Code effective January 1, 2023. Labor Code section 512.1, which applies to the University of California, the State of California, and all political subdivisions of the State, established the following rest break and meal period provisions for those entities' hospital and clinic employees who provide direct patient care or support direct patient care:

“(a) An employee directly employed by an employer shall be entitled to one unpaid 30-minute meal period on shifts over 5 hours and a second unpaid 30-minute meal period on shifts over 10 hours, as provided by Section 512.

“(1) The employee may waive a meal period in accordance with subdivision (a) of Section 512 and paragraph (D) of Section 11 of Wage Order Number 4 or paragraph (D) of Section 11 of Wage Order Number 5 of the Industrial Welfare Commission.

[¶] . . . [¶]

“(b) An employee who is directly employed by an employer shall be entitled to a rest period based on the total hours worked daily at the rate of 10 minutes net rest time per 4 hours or major fraction thereof, as provided by Wage Order Number 4 and Wage Order Number 5 of the Industrial Welfare Commission.

“(c) If an employer fails to provide to an employee a meal period or rest period in accordance with this section, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

“(d) This section does not apply to an employee directly employed by an employer who is covered by a valid collective bargaining agreement that provides for meal and rest periods, and, if the employee does not receive a meal or rest period as required by the agreement, includes a monetary remedy that, at a minimum, is equivalent to one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”

The County’s Initial Response to SB 1334

Janine Bouyea, Assistant Hospital Administrator at NMC, learned of SB 1334 in September or October 2022. Initially, she was unsure whether the new statute applied to SEIU unit members at NMC because the parties’ MOU included meal and rest period provisions. Bouyea sought advice from Ariana Hurtado, the County’s Assistant Director of Human Resources, and the County counsel’s office. Bouyea also contacted other county hospital systems to inquire about how they were handling SB 1334.

By November 2022, County leadership concluded that the terms of SB 1334 applied to SEIU unit members at NMC who provide or support direct patient care, because the County’s MOU with SEIU did not provide them with an additional hour of pay for each workday in which they miss a meal or rest period. Hurtado and Bouyea worked with the offices of the County counsel and auditor-controller to update NMC’s timekeeping and payroll systems for recording missed breaks and issuing the requisite payments. They also established staffing processes to ensure adequate coverage for employees to receive the appropriate number of breaks. During this time, the County also began drafting forms to facilitate the provisions in Labor Code section 512.1. The forms allowed employees to log missed break periods, as well as to waive, or revoke a waiver of, breaks.

December 21, 2022: County Provides SEIU Notice of Changes to Payroll and Timekeeping Policies

On December 21, 2022, Hurtado e-mailed Olivia Martinez, SEIU's Region 2 Director, informing her that "Natividad plans to update the departmental payroll and timekeeping policies in order to adhere to the requirements set forth under Senate Bill (SB) 1334," effective January 1, 2023. Hurtado noted that the "redline updates" were attached, and asked Martinez to contact her by December 30, 2022, if she wished to "schedule a meeting to discuss identified impacts to employees."

Attached to the letter was a copy of NMC Interdisciplinary Policy/Procedure Number 5:0900 regarding "PAYROLL POLICIES – TIMEKEEPING" with the County's changes in redline. One of the "updates" to the policy was that employees would be required to confirm at the end of each shift whether they took all their allotted meal and rest breaks. In addition, employees would be required to obtain "Manager approval" for each missed meal or rest period, verified by a manager's signature.

Neither Hurtado's e-mail nor the redlined version of "PAYROLL POLICIES – TIMEKEEPING" mentioned any plans to reduce the length of employee break periods. Nor was there any reference to waiving breaks or revoking such waivers.

December 29, 2022: The Parties Meet

SEIU was neither aware of nor supported SB 1334 prior to its passage into law. Martinez had not heard about SB 1334 prior to receiving Hurtado's December 21, 2022 e-mail. On December 28, 2022, Martinez responded to Hurtado, offering to meet between December 29, 2022 and January 3, 2023.

Martinez, Hurtado, and Bouyea met via videoconference at or around 10:00 a.m. on December 29, 2022.⁵ Martinez was concerned because neither of SEIU's stewards were able to attend the meeting. The meeting lasted about 20 minutes in total. The three discussed how little time there was to address the County's SB 1334 implementation plans before the legislation took effect on January 1, 2023. Martinez proposed that the County postpone implementation of SB 1334. Bouyea expressed concern over whether the County could lawfully delay implementation of its statutory obligations. She and Hurtado informed Martinez that they needed to consult with the County counsel's office before agreeing to any postponement. Bouyea, Hurtado, and Martinez did not discuss the length of employee breaks or any timekeeping forms during the meeting.

December 29, 2022: Hurtado E-Mails Martinez

Shortly after the meeting, around 10:27 a.m., Hurtado e-mailed Martinez attaching a draft side-letter agreement proposing multiple changes to the meal and rest break provisions in the MOU. As relevant here, one provision in the draft side-letter proposed reducing the rest periods for NMC's eight-hour shift employees from 15 minutes to 10 minutes. Another provision proposed that NMC and "Health Department" employees "shall be granted a meal period of thirty (30) minutes" and that employees in certain enumerated positions may be requested to waive their meal periods due to NMC's staffing that day. Hurtado asserted that the proposed changes

⁵ The ALJ credited Hurtado and Bouyea's testimony over Martinez's testimony regarding the December 29, 2022 meeting. Neither party excepted to this finding, and it remains binding on the parties. (*Trustees of the California State University (San Marcos)* (2020) PERB Decision No. 2738-H, p. 2, fn. 2.)

were necessary to implement SB 1334. This was the first time the County had provided the draft to SEIU.

Hurtado's e-mail also addressed SEIU's request to delay implementing the terms of SB 1334. On that issue, Hurtado stated:

"During our meeting SEIU requested that we postpone implementation of the legislation until February 1, 2023 to allow parties sufficient time to continue to discuss the legislation and applicable requirements for Natividad and the Health Department. This would also include postponing any penalties for missed breaks and lunches. Please confirm that I have captured SEIU's request correctly and that you are in agreement to postpone until February 1, 2023."

Martinez did not respond directly to Hurtado's e-mail and they did not communicate again until 11:34 p.m. that evening, when Hurtado e-mailed Martinez, stating in part:

"As an additional follow up to our discussions regarding the implementation of SB 1334 and associated impacts and after further discussion with counsel, the County is unable to agree to a delay in implementation of SB 1334. The County is required to adhere to the legislation effective January 1, 2023 as the provisions of the legislation do not allow for alternate implementation dates under agreements with the union."

Hurtado further stated that the County would "proceed with implementing the requirements of SB 1334 effective January 1, 2023" including "[p]roviding employees working eight (8) hour shifts with two ten (10) minute breaks during their shift"; "[p]roviding employees working twelve (12) hour shifts with three ten (10) minute breaks during their shift"; and "[p]roviding employees with a 30 minute meal break and confirm the waiver of the second thirty (30) minute meal break for employees on

twelve (12) hour shifts.” Hurtado also announced the County would begin tracking missed meal and rest breaks “for compensation purposes in accordance with SB 1334.” She concluded the e-mail by stating that the “County looks forward to continuing discussions with SEIU to address identified impacts and collaborate on possible MOU changes, as necessary.”

December 30, 2022: Martinez and Hurtado Exchange E-Mails

On December 30, 2022, Martinez e-mailed Hurtado, objecting to the County’s “unilateral change” and arguing that the actions violated both the terms of MOU section 10.1 and the requirements of SB 1334. Martinez also stated that SEIU was willing to meet on the subject.

Hurtado responded that afternoon, reiterating that the County would not delay implementing the terms of SB 1334 and stating that “the County remains committed to continuing to meet with SEIU and address[ing] MOU changes to comply with the legislation requirements.”

The County Issues a Memorandum to All NMC Staff

Also on December 30, 2022, Bouyea issued a memorandum to all NMC staff entitled “Senate Bill 1334.” She wrote that the County “has been actively working with your Labor Union” regarding how to implement SB 1334, but that it had “been unsuccessful i[n] finalizing needed adjustments to the MOU.” Per Bouyea, because the new legislation would take effect on January 1, 2023, the County “must implement the changes to meal and rest period[s] in accordance with SB 1334 as the legislation is written.” Bouyea announced that the County would implement the following terms:

“8 hour shift employees shall receive one (1)-30 minute unpaid meal period & two (2)-10 minute paid rest periods

“10 hour shift employees shall receive one (1)-30 minute unpaid meal period & two (2)-10 minute paid rest periods

“12 hour shift employees* (with signed 2nd meal waivers) shall receive (1)-30 minute unpaid meal period & (3)-10 minute paid rest periods

**staff schedules will be extended by 30 minutes for staff without a signed 2nd meal waiver on file and you will also be required to take two (2)-30 minute unpaid meal periods.*

“In an effort to comply with SB 1334, remedies will be assessed if meal/rest periods are not permitted due to work demands and waivers have not been executed.”

Later that day, Martinez sent Hurtado a letter demanding that the County “cease and desist unilaterally changing employees’ break times they are entitled to per the MOU,” and declaring that the County could implement SB 1334 without changing the length of employees’ rest periods. Hurtado responded that day, reiterating that the County could not delay the implementation of SB 1334 but that it “remains committed to continuing to meet with SEIU and address MOU changes to comply with the legislation requirements.”

The County Changes Rest and Meal Periods

Around January 1, 2023, the County implemented the changes outlined in its December 30, 2022 memorandum to employees. The County reduced eight-hour shift employees’ rest periods from 15 to 10 minutes and required employees to use the five timekeeping forms it had created to log missed meal and rest periods and waivers thereof: (1) “Meal/Rest Period Remedy Approval Form”; (2) “Individual Shift Meal and/or Rest Period Waiver”; (3) “Cancellation of 2nd Meal Period Waiver”; (4) “On-Duty

Meal Period Agreement or Cancellation”; and (5) “2nd Meal Period Waiver.” Employees were required to report their missed breaks on one of the County’s new forms, and depending on the form, obtain the signature of a supervisor or NMC human resources representative.

January 2023 and Beyond

On January 3, 2023, Martinez informed Hurtado that SEIU was filing a grievance and unfair practice charge against the County. She stated that asking unit members to sign forms relating to the implementation of SB 1334 was “another violation.” SEIU eventually filed a grievance over this matter, and the parties met in January 2023 as part of the grievance process. The grievance was pending arbitration as of the date of the proposed decision.

On January 4, 2023, the County issued a revised memorandum to all staff reiterating that employees working an eight-hour shift would receive two 10-minute breaks.

DISCUSSION

In resolving exceptions, the Board applies a de novo standard of review. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) However, the Board need not address alleged errors that would not affect the outcome. (*Ibid.*)

Here, we categorize the County’s exceptions as primarily twofold. First, the County challenges the ALJ’s liability finding, arguing that it met and conferred in good faith, while SEIU did not. In the alternative, the County asks us to clarify the proposed remedial order. SEIU’s exceptions are directed to the proposed remedy. Although the

ALJ adequately addressed the County's arguments as to liability, we briefly address its main liability arguments before turning to both parties' remedy arguments.⁶

I. Unilateral Change

A. Prima Facie Case

To establish a prima facie case that a respondent employer made an unlawful unilateral change, a charging party must prove: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse.

(Bellflower Unified School District (2021) PERB Decision No. 2796, p. 9 (Bellflower).)

The ALJ found that SEIU stated a prima facie case of an unlawful unilateral change. The County appears to contest only the fourth element, asserting several reasons why it allegedly provided adequate notice and negotiated in good faith, none of which have merit.

First, the County argues that its late December 2022 communications to SEIU "all clearly indicated they were related to implementation of SB 1334," citing to its December 21, 2022 notice to SEIU regarding impending changes to its payroll/timekeeping policies. But as explained above, neither Hurtado's December 21, 2022

⁶ Because the County did not except to the ALJ's finding of a bypassing violation, we find no cause to address or disturb it.

e-mail nor the attached payroll/timekeeping policy disclosed the County's intent to reduce the length of any employee breaks and to disseminate new timekeeping forms. The County did not provide notice of its intent until the morning of December 29, 2022, and by that evening, the County announced it would implement these changes as a *fait accompli*. (*County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 24; *City of Sacramento* (2013) PERB Decision No. 2351-M, p. 33.) As the ALJ found, 13 hours on December 29 was not sufficient notice for SEIU to consider whether to demand negotiations over the changes to its unit members' meal and rest periods, much less to engage in good faith negotiations.

Next, the County contends that it had a "meal break waiver" (permitting employees to skip a meal break and leave work earlier) both before and after implementation of Labor Code section 512.1 and nothing changed." The County is correct that 12-hour shift employees were permitted to waive their *second meal breaks* before January 1, 2023, and for this reason we partially affirm the ALJ's proposed remedy, to the extent it denied make-whole relief for second meal periods waived by 12-hour shift employees beginning in 2023. However, the County did not have a *rest period* waiver prior to 2023. When Labor Code section 512.1 became effective, the County became required to compensate employees with an additional hour's pay for each workday in which an employee missed meal or rest breaks.⁷ The law disallows rest break waivers, but permits employees to waive their second meal periods, or to

⁷ While PERB does not have authority to enforce the Labor Code, it may interpret provisions of external law as necessary to decide questions arising under the collective bargaining statutes we administer. (*El Dorado County Superior Court* (2018) PERB Decision No. 2589-C, p. 4.)

waive their first and only meal period if they work no more than six hours. (Lab. Code, §§ 512, subd. (a) & 512.1, subd. (a)(1).) To the extent the County instituted waiver forms for any situation other than a 12-hour shift employee waiving a second meal period, such action was a clear change in policy. Next, the County asserts that it acted in good faith and faced “significant challenges” owing to the “complete dearth of guidance from the Department of Industrial Relations” and the County’s labor consultant regarding SB 1334. The County also faults its outside counsel for failing to give it adequate assistance. These arguments fail for multiple reasons, not the least because an employer’s unilateral change without affording adequate notice and opportunity to bargain is a per se bargaining violation irrespective of the employer’s good faith belief in its mistaken position or other evidence regarding its motive.

(Bellflower, supra, PERB Decision No. 2796, p. 12; *Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 9, fn. 4; *City of Montebello* (2016) PERB Decision No. 2491-M, p. 10; *County of Riverside* (2014) PERB Decision No. 2360-M, p.18; *City of San Jose* (2013) PERB Decision No. 2341-M, p. 24.)

Even aside from that central problem with the County’s argument, Bouyea learned of SB 1334 in September or October 2022, providing the County adequate opportunity to research and prepare for its obligations under the new statute, as well as to bargain with SEIU over it. Moreover, the County could have followed SB 1334 without making the unilateral changes at issue. Most obviously, the new law set a floor for rest periods, not a ceiling, and did not require the County to reduce employee rest periods. The fact that the County’s 15-minute rest periods complied with the law’s minimum length—and the County therefore was under no requirement to shorten its

rest breaks—belies the County’s alleged good faith. Indeed, the County’s attempt to use the new law to unilaterally abrogate its collective bargaining agreement was an egregious violation and entirely inconsistent with its claim of good faith, even assuming for the sake of argument that motive was relevant. Nor did the new law require the County to solicit waivers in situations in which it had not done so before.

In addition, even if the complaint had challenged an aspect of the County’s changes that SB 1334 absolutely required as of January 1, 2023, the County would have nonetheless had an obligation to provide adequate advance notice and to bargain in good faith before and after the statute’s effective date to establish a business necessity defense, which it did not accomplish here. (*Imperial Irrigation District* (2023) PERB Decision No. 2861-M, pp. 55-57; *Lucia Mar Unified School District* (2001) PERB Decision No. 1440, adopting proposed decision at pp. 45-47.)

Finally, we find no value in the County’s assertion that it “successfully” met and conferred with the California Nurses Association (CNA) over SB 1334 both prior to and after January 1, 2023, namely because that claim is misleading and inaccurate. As of the date of the hearing, the County had not reached an agreement with CNA. And even if true, we would derive little significance from its negotiations with CNA, which are not probative of its bargaining conduct with SEIU.

In sum, the ALJ’s conclusions are supported by the record.

B. Affirmative Defense

The remainder of the County’s arguments focus on SEIU’s alleged bad faith bargaining conduct. The ALJ correctly found that the County waived this affirmative defense by not raising it in its answer. (PERB Reg. 32644, subds. (b)(5) & (6);

Regents of the University of California (2018) PERB Decision No. 2601-H, pp. 13-14.) Even had the County preserved this defense, it would be of no value because SEIU had no duty to bargain with the County for two reasons. First, SEIU had no duty to engage in mid-contract negotiations over terms set in the contract that were still valid after the Legislature enacted SB 1334. (*Oxnard Unified School District* (2022) PERB Decision No. 2803, p. 46; *id.* at p. 48 [employer bears heavy burden to show newly enacted law requires it to deviate from terms of contract].) Second, the County's failure to provide SEIU notice and an opportunity to bargain before reaching its decision to implement the SB 1334-related changes relieved SEIU of any obligation to pursue negotiations. (*Oakland Unified School District* (2024) PERB Decision No. 2906, p. 22; *City of Sacramento, supra*, PERB Decision No. 2351-M, p. 33 ["[w]here the representative's 'actual' or 'constructive' knowledge of a 'proposed' policy change is the result of the employer's *implementation* of that change, by definition, there has been inadequate notice"] (original italics); *Kern County Hospital Authority* (2022) PERB Decision No. 2847-M, pp. 17-18.)

Finally, even if considered, the County's affirmative defense would fail for another reason as well. The County did not show that its attempts to negotiate in good faith were met with delay, obstruction, and lack of diligence on SEIU's part. As the ALJ explained, the County presented no evidence that, prior to December 21, 2022, SEIU knew of, much less lobbied for, the passage of SB 1334. A mere nine days later, the County notified SEIU of its decision to reduce employee rest periods. SEIU responded the next day, objecting to the County's unilateral action and stating SEIU's willingness to negotiate on the subject. We find no evidence of unreasonable delay on these facts.

Last, we do not find bad faith in SEIU's request that the County delay implementation of SB 1334, as the County need not have made the unilateral changes at issue to comply with the new law. (See *ante* at pp. 14-15.) The County thus could have followed SB 1334 while bargaining in good faith.

II. Remedy

The standard remedy for an employer's unlawful unilateral change includes an order to cease and desist the unlawful conduct, bargain, restore the status quo prospectively, and provide appropriate make-whole relief plus interest. (*Pittsburg Unified School District* (2022) PERB Decision No. 2833, p. 14; *City of Pasadena* (2014) PERB Order No. Ad-406-M, pp. 12-15.) This remedy also applies to a bypassing violation. (*Antelope Valley Community College District* (2018) PERB Decision No. 2618, pp. 24-25; *Omnitrans* (2010) PERB Decision No. 2143-M, pp. 8-9.)

Both parties seek clarification as to the proposed remedy. Most of the County's questions, e.g., to which job classifications the remedial order applies and the date compound interest begins to accrue, will be resolved in the compliance process. (PERB Reg. 32980.) The County's liability begins on January 1, 2023, the day it implemented the changes to employee rest and meal periods.

SEIU asks us to clarify the ALJ's proposed remedy regarding the County's newly created forms for logging missed break periods, waiving missed breaks, and rescinding those waivers as of January 1, 2023. The ALJ ordered the County to "rescind these forms and the process that they are based upon." SEIU requests that we confirm the order includes voiding any waiver forms SEIU-represented employees signed since January 1, 2023. We adjust the proposed order to include voiding any

such forms, other than those signed by 12-hour shift employees waiving a second meal period.

In addition, SEIU requests that we order the County to compensate unit members for meal and rest breaks that were waived via the unlawful forms. We grant this request in part, and order that the County make unit members whole for any rest breaks waived through the new forms beginning January 1, 2023, as well as for waived meal periods other than second meal periods waived by 12-hour shift employees. We deny SEIU's request for make-whole relief for second meal periods that 12-hour employees waived, as record evidence establishes that unit members working 12-hour shifts were able to affirmatively waive their second meal periods prior to 2023. We adjust the ALJ's remedy accordingly.⁸

⁸ When an employer violates a PERB-administered law in a manner that increases work time without additional compensation, the normal remedy includes pay at an hourly rate (or leave time in lieu of pay), irrespective of whether the employee normally receives compensation on a salaried or hourly basis. (*City of Pasadena, supra*, PERB Order No. Ad-406-M, pp. 8, 12-13 & adopting compliance order at pp. 7, 10; *Mark Twain Union Elementary School District* (2003) PERB Decision No. 1548, p. 9; *Corning Union High School District* (1984) PERB Decision No. 399, pp. 10, 16-17] (*Corning*); *San Mateo City School District* (1984) PERB Decision No. 375a, p. 6; see also *California State Employees Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 946-947 [citing with approval the Board's remedial approach in *Corning, supra*, PERB Decision No. 399].) However, the cited decisions did not involve missed breaks for which employees might receive one-hour penalty payments. Accordingly, our order affords the compliance officer discretion to avoid double compensation for the same violation. For instance, the compliance officer may determine that if an employee has received or will receive a one-hour payment for a lost rest break or meal period, then there may be no cause to also receive compensation for the time worked during that break or meal period.

ORDER

Based upon the foregoing and the entire record in this case, the Public Employment Relations Board (PERB) finds that the County of Monterey (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3505 and 3506.5, subdivision (c), by unilaterally changing the length of rest periods for eight-hour and ten-hour Natividad Medical Center (NMC) employees represented by Service Employees International Union, Local 521 (SEIU), changing the forms and procedures for meal and rest breaks (including missed breaks and waivers thereof), and communicating directly to SEIU-represented members about establishing new policies for meal and rest breaks.

Pursuant to Government Code section 3509, we hereby ORDER that the County, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Changing SEIU-represented employees' meal periods, rest breaks, or payroll/timekeeping procedures before affording SEIU adequate advance notice and opportunity to bargain in good faith.
2. Bypassing SEIU and communicating directly with SEIU-represented employees regarding changes to employees' meal periods, rest breaks, or payroll/timekeeping procedures.
3. Interfering with the rights of bargaining unit employees to be represented by SEIU.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Rescind the decision to reduce the length of rest periods for NMC's eight-hour and ten-hour shift employees represented by SEIU, and restore the 15-minute rest periods for those employees.

2. Rescind NMC's (1) "Meal/Rest Period Remedy Approval Form"; (2) "Individual Shift Meal and/or Rest Period Waiver"; (3) "Cancellation of 2nd Meal Period Waiver"; and (4) "On-Duty Meal Period Agreement or Cancellation," or any variations thereof created since January 1, 2023, and void any such forms that SEIU-represented members have signed since January 1, 2023.

3. Upon SEIU's request, bargain in good faith over changes to policies concerning meal and rest periods, and over any forms used to implement those changes.

4. Compensate SEIU-represented NMC employees for financial losses incurred due to the County's unlawful actions, including but not limited to: (a) backpay for eight-hour and ten-hour shift employees who were required to work an additional five minutes per rest period because the County unilaterally reduced the length of their rest periods; (b) backpay for employees who waived any meal periods or rest breaks through the County's new forms, other than 12-hour shift employees who waived a second meal period; and/or (c) lost payments under Labor Code section 512.1, subdivision (c), for employees who missed a meal or rest period but were denied compensation because the employees did not utilize the County's forms, as well as for employees who waived a meal or rest break using the new forms (other

than 12-hour shift employees who waived a second meal period). All payments in this section shall be augmented by interest accrued to the date of payment at an annual rate of 7 percent, compounded daily.

5. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where the County posts notices to employees represented by SEIU, copies of the Notice attached hereto as an Appendix. An authorized agent of the County must sign the Notice, indicating that the County will comply with the terms of this Order. The County shall maintain the posting for a period of 30 consecutive workdays. The County shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. In addition to physically posting this Notice, the County shall communicate it by electronic message, intranet, internet site, and other electronic means the County uses to communicate with employees represented by SEIU.⁹

6. Notify OGC of the actions the County has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on SEIU.

Members Krantz and Nazarian joined in this Decision.

⁹ Either party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.



**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California**

After a hearing in Unfair Practice Case No. SF-CE-2050-M, *Service Employees International Union Local 521 v. County of Monterey*, in which all parties had the right to participate, the Public Employment Relations Board found that the County of Monterey (County) violated the Meyers-Miliias-Brown Act (MMBA), Government Code sections 3505 and 3506.5, subdivision (c), by unilaterally changing the length of rest periods for eight-hour and ten-hour Natividad Medical Center (NMC) employees represented by Service Employees International Union, Local 521 (SEIU), changing the forms and procedures for meal and rest breaks (including missed breaks and waivers thereof), and communicating directly to SEIU-represented members about establishing new policies for meal and rest breaks.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Changing SEIU-represented employees' meal periods, rest breaks, or payroll/timekeeping procedures before affording SEIU adequate advance notice and opportunity to bargain in good faith.
2. Bypassing SEIU and communicating directly with SEIU-represented employees regarding changes to employees' meal periods, rest breaks, or payroll/timekeeping procedures.
3. Interfering with the rights of bargaining unit employees to be represented by SEIU.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Rescind the decision to reduce the length of rest periods for NMC's eight-hour and ten-hour shift employees represented by SEIU, and restore the 15-minute rest periods for those employees.
2. Rescind NMC's (1) "Meal/Rest Period Remedy Approval Form"; (2) "Individual Shift Meal and/or Rest Period Waiver"; (3) "Cancellation of 2nd Meal Period Waiver"; and (4) "On-Duty Meal Period Agreement or Cancellation," or any variations thereof created since January 1, 2023, and void any such forms that SEIU-represented members have signed since January 1, 2023.

3. Upon SEIU's request, bargain in good faith over changes to policies concerning meal and rest periods, and over any forms used to implement those changes.

4. Compensate SEIU-represented NMC employees for financial losses incurred due to the County's unlawful actions, including but not limited to: (a) backpay for eight-hour and ten-hour shift employees who were required to work an additional five minutes per rest period because the County unilaterally reduced the length of their rest periods; (b) backpay for employees who waived any meal periods or rest breaks through the County's new forms, other than 12-hour shift employees who waived a second meal period; and/or (c) lost payments under Labor Code section 512.1, subdivision (c), for employees who missed a meal or rest period but were denied compensation because the employees did not utilize the County's forms, as well as for employees who waived a meal or rest break using the new forms (other than 12-hour shift employees who waived a second meal period). All payments in this section shall be augmented by interest accrued to the date of payment at an annual rate of 7 percent, compounded daily.

Dated: _____

County of Monterey

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Appeals Office, 1031 18th Street, Suite 223, Sacramento, CA, 95811-4124.

On September 10, 2024, I served PERB Decision No. 2919-M regarding *Service Employees International Union Local 521 v. County of Monterey*, Case No. SF-CE-2050-M on the parties listed below by

I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.

Personal delivery.

Electronic service (e-mail).

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Janet L. Holmes, Assistant County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901-2439
Email: holmesjl@countyofmonterey.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 10, 2024, at Sacramento, California.

Joseph Seisa
(Type or print name)


(Signature)