

Orange County Court: Bargaining Records Subject to Public Records Act

01/31/2016, California PERB Blog, Tim Yeung

There was an interesting court case last week in Orange County (County) on the issue of whether the County's bargaining records are subject to a California Public Records Act (CPRA) request. Jon Fleischman, publisher of the widely read Flash Report, had requested that the County release all documents regarding its ongoing negotiations with the Association of Orange County Deputy Sheriffs (Union). The request asked for all formal and informal offers and counteroffers, including "supposals," between the County and the Union.

The County was prepared to comply with the request but the Union filed a "reverse-CPRA" action in superior court seeking to stop the County from producing the documents. The Union argued that under the CPRA's "catch-all" exception, the public interest was better served by keeping the documents confidential. Specifically, the Union argued: 1) that releasing the documents would violate the parties' ground rule that negotiations not be publicized; and 2) that disclosure would undermine the bargaining process envisioned by the MMBA.

According to a news article, the Judge rejected the Union's arguments and stated that the Union's reliance on the MMBA was "a bridge too far." The Judge also took issue with the Union's assertion that the documents could be misinterpreted. According to the article, the Judge said that, "The fact is, we have a county that's run by the people, for better or for worse."

Comments:

1. Getting a public records act request is not uncommon. Certainly, after negotiations are over there are not a lot of arguments to keep negotiations documents confidential for most public agencies. However, while negotiations are ongoing I have certainly seen some public agencies take the position that the release of negotiations documents would not serve the public interest. In this particular case, the Judge disagreed.
2. This case also presents an opportunity to highlight a quirk in the CPRA. Under the CPRA, there is an express exemption from disclosure for records that reveal the deliberative process, recommendations, and strategy that relate to activities under the Dills Act, State Excluded Employees Bill of Rights, and HEERA. (Gov. Code 6254(p).) Notably, the exemption does not expressly apply to the MMBA or other public sector collective bargaining statutes. Hence, the County in this case felt that it had to disclose the requested documents.