

OFFICE OF THE GENERAL COUNSEL

Practice Group Advisory

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SUMMARY

California's high court affirms public employers' right to decide to lay off employees for fiscal reasons without bargaining that decision, although the effects of the layoff remain subject to bargaining.

If you have any questions regarding how this California Supreme Court decision may impact the University's layoff decisions, please contact:

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This practice group advisory is issued by the Office of the General Counsel to provide updates regarding important legal and regulatory developments that affect the University. For additional information or assistance with a specific legal matter, please contact the Office of the General Counsel.

CALIFORNIA SUPREME COURT CONFIRMS BUDGETARY LAYOFF DECISIONS BY PUBLIC EMPLOYERS ARE NOT SUBJECT TO BARGAINING

The California Supreme Court confirmed last week in *International Association of Fire Fighters, Local 188 v. Public Employment Relations Board (City of Richmond)* that a public employer's decision to lay off employees for financial reasons is not subject to bargaining. This ruling affirms a line of decisions issued by the lower courts and the Public Employment Relations Board (PERB) that an employer has the right to lay off employees for budgetary reasons without bargaining over that decision with its unions. The effects of a layoff decision continue to be subject to an obligation to negotiate.

The case arose from the City of Richmond's decision to lay off 18 firefighters in 2003. At the time, the City faced a significant budget deficit and asserted that layoffs would help close the budget gap. The City attempted to bargain with the firefighters' union over the effects of the layoffs, but the union rebuffed those efforts, seeking to negotiate the layoff decision itself. The union filed an unfair practice charge with PERB, claiming that the City's refusal to bargain the layoff decision violated the Meyers-Milias-Brown Act (MMBA). PERB dismissed the charge and declined to issue a complaint. PERB concluded that the layoffs were not a mandatory subject of bargaining and that the union had not attempted to bargain the effects of the layoffs. The union thereafter brought a separate court action that ultimately made its way to the California Supreme Court.

On the layoff decision, the Court stated that a "public entity that is faced with a decline in revenues or other financial adversity may unilaterally decide to lay off some of its employees to reduce labor costs." The Court went on to state that the public entity "must, however, give its employees an opportunity to bargain over the implementation of the decision, including the number of employees to be laid off, and the timing of the layoffs, as well as the effects of the layoffs on the workload and safety of the remaining employees." The Court acknowledged that prior cases had held that the decision to eliminate bargaining unit jobs "by reassigning the work to nonunit employees is a matter within the scope of representation and thus a mandatory subject of bargaining." Here, however, the City had not transferred the firefighters' work to employees outside of the bargaining unit, and this was a key factor in the Court's decision.

The Court further stated that PERB's refusal to issue an unfair practice complaint normally is not subject to judicial review. It recognized only three limited circumstances where judicial review would be warranted: where PERB's refusal (1) violates a constitutional right; (2) exceeds its statutory powers; or (3) is based on the erroneous construction of a statute.

Although the Court decided this case under the MMBA, the Higher Education Employer-Employee Relation Act, which applies to the University, contains similar statutory language. For this reason, the Courts likely would apply similar reasoning in a challenge under HEERA to a budgetary layoff decision by the University.