

# HR® THE PUBLIC SECTOR

## A very, very, very fine house: the sequel

by Jonathan Holtzman

When last we visited the city of Stockton in this column, it was engaged in a contentious legal battle with the Stockton Police Officers' Association (SPOA). On July 14, 2010, the SPOA filed a lawsuit in San Joaquin County Superior Court challenging the city's declaration of a financial emergency under which it froze police officers' compensation despite a labor contract that would otherwise have required pay raises based on a formula. The union asserted claims for breach of contract, unconstitutional impairment of contract, and declaratory relief.

The city and the SPOA failed to reach agreement over concessions that would have obviated the need for emergency measures. The following year, before adopting the 2011-12 budget, the city renewed the financial emergency, which resulted in compensation reductions for police and one other bargaining unit. All other bargaining units agreed to proposed compensation reductions.

At almost the precise moment the city council adopted the second emergency declaration, the SPOA purchased the house directly next door to the city manager. In light of these events, the city, on July 12, 2011, asked the court presiding over the SPOA's lawsuit to allow it to file a cross-complaint challenging the association's purchase and use of the property, among other things. That request was granted over the union's opposition.

In response, the SPOA filed a motion to dismiss and an anti-SLAPP motion (a request to stop a "strategic lawsuit against public participation") seeking attorneys' fees against the city. In its motion to dismiss, the union claimed that because the purchase of the house was legal, it couldn't constitute unlawful retaliation against the city manager. In its anti-SLAPP motion, the union claimed, among other things, that it had a constitutional right to purchase the house and that the city's cross-complaint was interfering with its right to free speech. The hearing, which covered some pretty esoteric issues, was covered by Fox Business network and has led to press inquiries and coverage about "the house" by the *Los Angeles Times* and Bloomberg News, among others.

On January 5, 2012, Superior Court Judge Lesley Holland determined that the purchase of the house could in fact constitute unlawful retaliation and denied the union's anti-SLAPP motion. The decision affirms that the purchase of the house need not be an illegal act for it to constitute an unfair pressure tactic

under the state's collective bargaining law, the Meyers Milius Brown Act. Judge Holland wrote:

[T]here are many situations in which otherwise lawful activity may support charges of unlawful harassment or intimidation. For example, a victim of alleged stalking may point to conduct or behavior that is ostensibly legal — the alleged stalker shows up where the victim shops, or in the parking lot where the victim works, or is "passing by" when the victim picks up children from school. Another example: in the midst of criminal trial, members of the [accused's] motorcycle club ride en masse, banners waving, to the courthouse each day to observe the trial — their route "coincidentally" takes them down the street and past the home of the prosecutor and the prosecutor's family.

As this was a preliminary skirmish, the court ruled that whether the city could ultimately prove the claim of intimidation, coercion, or similar unfair action will depend on the facts in the case. Nonetheless, the ruling is a significant victory for Stockton and may discourage unions from engaging in this creative type of retaliation and coercion against policymakers.

While this is a significant victory for the city, the central issue in the case remains the union's challenge to the legitimacy of the financial emergency itself and its assertion that the city's compensation reduction was legally unjustified. The next step will be for the parties to engage in discovery (the pretrial exchange of information relevant to the lawsuit), which, the court also ruled, will be overseen by a special master. In the meantime, the SPOA contract ends on July 1, and negotiations are commencing shortly. Regardless of the outcome of the litigation, the parties will need to come together at the bargaining table to negotiate the terms of a new contract.

The moral of the story thus far: Even buying the house next to the city manager in the heat of a labor dispute cannot make money appear. And few would dispute that money is in decidedly short supply in Stockton.



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