

News

## PERB: Use of GPS Devices Must be Negotiated

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As tracking technologies—such as global positioning systems (“GPS”) and video surveillance—have become more readily available and less expensive, public employers are increasingly using them for a variety of reasons, including to protect their property, keep persons safe and monitor employee activities. Data received from those technologies may at times reveal information that the employer seeks to use to evaluate or discipline employees, leading to the question: Is the employer required to negotiate before deciding to use such technologies? In a recently published decision, *San Bernardino Community College District (2018) PERB Decision No. 2599*, the Public Employment Relations Board (“PERB”) held that a community college district was required to negotiate the decision to use a GPS device on a district vehicle.

The facts of the case involved the district’s decision to install a tracking device on a community services officer’s work vehicle after receiving reports that he was leaving his assigned patrol area. When data from the device confirmed that the employee was leaving his assigned patrol area, the district released him. The district then continued using the device when another officer used the same vehicle, and the district terminated that employee when data also confirmed that he was leaving his assigned patrol area. PERB concluded that the underlying decision to use the device was subject to negotiation under the Educational Employment Relations Act (“EERA”) because the primary purpose of the device was to track employee activity, as opposed to a fundamental management prerogative such as protecting public property or keeping staff and members of the public safe.

Notably, PERB compared this to in a similar case decided under the EERA, *Rio Hondo Community College District (2013) PERB Decision No. 2313*, in which a community college district installed video surveillance equipment for the primary purpose of protecting property and furthering campus safety. PERB held that, in



those circumstances, the employer's decision to install the video surveillance furthered legitimate managerial interests and therefore was not negotiable, but the decision still had negotiable impacts and effects because the data might be used to evaluate or discipline employees.

Because these decisions were made under the EERA, they apply to K-12 school districts and community college districts. However, PERB's reasoning in these cases may apply to other California public sector bargaining statutes, thereby impacting other types of public employers who seek to use tracking technologies.

Taken together, public school employers and other public employers subject to similar bargaining statutes can take the following lessons from these cases:

- These cases do not prohibit employers from using tracking and similar technologies. Rather, they require employers to bargain the decision and/or the impacts of the decision to use these technologies in certain circumstances.
- When determining whether the use of tracking and similar technologies is negotiable, the employer should ask and answer: What is the primary purpose of the technology?
  - If the primary purpose is to monitor employee activity, the employer must provide the affected union(s) with written notice and an opportunity to bargain prior to making a firm decision to use the technology.
  - If the primary purpose is to protect the employer's property, further safety interests or carry out another type of core managerial interest—and not simply to monitor employees—the underlying decision to use the technology is not negotiable. However, if that decision has foreseeable impacts and effects on matters within the scope of representation—such as if data from the technology could be used to evaluate and discipline employees—the employer must provide written notice and an opportunity to negotiate those impacts and effects. Importantly, the employer must provide this notice sufficiently in advance of implementing the technology to allow time for meaningful negotiations.

If you have any questions regarding these cases or how your agency can utilize tracking technology in compliance with the law, please contact one of our six offices.

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