STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 721, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	Case No. LA-CE-497-M PERB Decision No. 2163-M February 18, 2011

Appearances: Weinberg, Roger & Rosenfeld by Alan G. Crowley, Attorney, for Service Employees International Union, Local 721; The Zappia Law Firm by Edward P. Zappia, Attorney, for County of Riverside.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Riverside (County) to the proposed decision (attached) of an administrative law judge (ALJ). The complaint issued by PERB's Office of the General Counsel alleged that the County violated the Meyers-Milias-Brown Act (MMBA)[1] when it denied Service Employees International Union, Local 721's (SEIU) petitions to add unrepresented per diem employees to three bargaining units represented by SEIU. The ALJ ruled that the County unreasonably applied its local rules to deny the petitions.

The Board has reviewed the proposed decision and the record in light of the County's exceptions, SEIU's response thereto, and the relevant law. Based on this review, we find the

[1] The MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

proposed decision to be well-reasoned, adequately supported by the record, and in accordance with applicable law. Accordingly, the Board adopts the proposed decision as the decision of the Board itself, as supplemented by the discussion below.[2]

DISCUSSION

MMBA section 3507, subdivision (a), authorizes a local public agency to "adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations." Pursuant to this subdivision, the County adopted an Employee Relations Resolution (ERR) that includes rules for determining appropriate bargaining units and recognizing an employee organization as the exclusive representative of a bargaining unit. Section 10 of the ERR governs modification of an existing bargaining unit. When an employee organization petitions to add employees to an existing unit, Section 10 does not require any showing of support among the employees sought to be added.

On August 6, 2008, SEIU petitioned to modify its professional, paraprofessional and registered nurses bargaining units to include unrepresented per diem employees working in unit classifications. The County denied SEIU's petitions because they were not accompanied by proof that a majority of the employees to be added to the units desired to be represented by SEIU. In the proposed decision, the ALJ concluded that it was unreasonable for the County to impose a majority support requirement on SEIU's petitions.

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[2] The parties requested oral argument in this matter. Historically, the Board has denied requests for oral argument when an adequate record has been prepared, the parties had ample opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear to make oral argument unnecessary. (*United Teachers of Los Angeles (Valadez, et al.)* (2001) PERB Decision No. 1453; *Monterey County Office of Education* (1991) PERB Decision No. 913.) Based on our review of the record, all of the above criteria are met in this case. Therefore, the parties' requests for oral argument are denied.

In its exceptions, the County acknowledges that its ERR is silent regarding proof of support for a unit modification petition but nonetheless argues that it is necessary to imply a majority support requirement into Section 10 to prevent unrepresented employees from being "involuntarily unionized against their will." Such a requirement, however, is contrary to well-established law governing the addition of employees to an existing bargaining unit, which requires a showing of majority support among the employees to be added to the unit only under certain circumstances.

The National Labor Relations Board (NLRB) does not require a showing of majority support "when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." (*E.I. Du Pont de Nemours, Inc.* (2004) 341 NLRB 607, 608.) It only requires such a showing when the employees to be added historically have been excluded from the unit, typically (but not necessarily) by agreement between the union and the employer. (*Teamsters National United Parcel Service Negotiating Committee v. National Labor Relations Bd.* (D.C. Cir. 1994) 17 F.3d 1518, 1522; *Laconia Shoe Co.* (1974) 215 NLRB 573, 576.)

PERB does not follow the NLRB's approach to accretion. Instead, PERB regulations require a showing of majority support when adding the requested employees "would increase the size of the established unit by ten percent or more." (PERB Regs. 32781(e)(1); 61450(e)(1); 81450(e)(1); 91450(e)(1).)[3] If the addition would not increase unit size by ten

[3] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 61450(e)(1) applies to unit modification petitions filed under the MMBA. This regulation, which is identical to the others listed, states in full:

> If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase

percent or more, no showing of majority support is required. (*Regents of the University of California* (2010) PERB Decision No. 2107-H.)

As these authorities demonstrate, a showing of majority support is not required every time a union seeks to add employees to an existing bargaining unit. Nor do the authorities apply different rules when a unit modification petition seeks to add unrepresented employees to a unit. Accordingly, we reject the County's argument that a majority support requirement must be implied in ERR Section 10.[4]

In the alternative, the County contends that PERB Regulation 61450(e)(1) should apply in light of Section 10's silence regarding majority support. Pursuant to MMBA section 3509, subdivision (a), "PERB regulations serve to 'fill in the gap' when a local agency has not adopted a local rule on a particular representation issue."[5] (*County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M.) Under this standard, PERB regulations apply only when the agency has no rule at all that governs a representation issue. (*County of Orange* (2010) PERB Decision No. 2138-M; *County of Siskiyou/Siskiyou County Superior Court, supra.*) Here, the County has adopted a local rule governing unit modification and, therefore, PERB's unit modification regulations do not apply.

> the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

[4] We also note that PERB has consistently held that "while employees have the right to choose which employee organization, if any, they want to represent them, they have no right to choose the bargaining unit in which their classification or position is placed." (*Regents of the University of California, supra*; *Elk Grove Unified School District* (2004) PERB Decision No. 1688; *Salinas Union High School District* (2002) PERB Order No. Ad-315.)

[5] MMBA section 3509, subdivision (a) states, in relevant part: "Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule."

MMBA section 3507, subdivision (a) gives the County the ability to directly address its concern that ERR Section 10 allows unrepresented employees to be added to a bargaining unit without any showing of support: "after consultation in good faith with representatives of a recognized employee organization or organizations," the County can amend its unit modification rule to include a reasonable employee support requirement. The County may not ignore the Legislature's directive by adding requirements to the rule without participating in the statutorily required consultation. Nor has the Legislature granted PERB the authority to use its regulations to rewrite a local agency's rules, even if the agency urges PERB to do so. Thus, unless and until a proper amendment of its unit modification rule occurs, the County may not lawfully require a showing of majority support to add employees to an existing bargaining unit.[6]

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is found that the County of Riverside (County) violated the Government Code, Meyers-Milias-Brown Act (MMBA) sections 3503, 3506 and 3509(b), by unreasonably and unlawfully denying two unit modification petitions submitted by Service Employees International Union, Local 721 (SEIU) seeking to add per diem employees to three of its existing bargaining units. By this same conduct, the County violated the MMBA by denying SEIU its right to represent its members and interfering with the rights of its employees to be represented by an employee organization.

[6] Because no majority support requirement applies in this case, we need not address the County's exception to the ALJ's finding that adding the per diem employees to the registered nurses bargaining unit would not increase the unit's size by more than ten percent.

Pursuant to Section 3509(b) of the MMBA, it hereby is ORDERED that the County, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unreasonably applying the rules in Section 10 of the County's Employee Relations Resolution (ERR) regarding unit modification.

2. Requiring a showing of majority support for a unit modification petition unless and until the ERR is amended to include such a requirement.

3. Denying a modified unit modification petition as untimely when the original petition was denied on procedural grounds.

4. Denying to SEIU the right to represent its members.

5. Interfering with the right of employees to be represented by the employee organization of their choice.

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

1. Rescind the September 22, 2008 and October 1, 2008 denials of SEIU's unit modification petitions;

2. Upon request by SEIU, process SEIU's September 25, 2008 modified petitions in accord with a reasonable interpretation of Section 10 of the ERR;

3. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations where notices to County employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable

steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The County shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on SEIU.

Members McKeag and Wesley joined in this Decision.

APPENDIX

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. LA-CE-497-M, *Service Employees International Union, Local 721 v. County of Riverside*, in which all parties had the right to participate, it has been found that the County of Riverside (County) violated the Government Code, Meyers-Milias-Brown Act (MMBA) section 3500 et seq., by unreasonably and unlawfully denying two unit modification petitions filed by Service Employees International Union, Local 721 (SEIU).

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

A. CEASE AND DESIST FROM:

1. Unreasonably applying the rules in Section 10 of the County's Employee Relations Resolution (ERR) regarding unit modification.

2. Requiring a showing of majority support for a unit modification petition unless and until the ERR is amended to include such a requirement.

3. Denying a modified unit modification petition as untimely when the original petition was denied on procedural grounds.

4. Denying to SEIU the right to represent its members.

5. Interfering with the right of employees to be represented by the employee organization of their choice.

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

1. Rescind the September 22, 2008 and October 1, 2008 denials of SEIU's unit modification petitions.

2. Upon request by SEIU, process SEIU's September 25, 2008 modified petitions in accord with a reasonable interpretation of Section 10 of the ERR.

Dated: _____ COUNTY OF RIVERSIDE

By: _____
Authorized Agent

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 721, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-497-M PROPOSED DECISION (October 13, 2009)

Appearances: Weinberg, Roger & Rosenfeld by Alan G. Crowley, Attorney, for Service Employees International Union Local 721; The Zappia Law Firm by Edward Zappia, Attorney, for County of Riverside.

Before Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

On November 14, 2008, Service Employees International Union Local 721 (SEIU) filed an unfair practice charge alleging that the County of Riverside (County) acted inconsistently with its local rules when it denied SEIU's original petition and modified petition to add per diem employees to its existing bargaining units. On December 11, 2008, the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that by this conduct, the County committed an unfair practice under Meyers-Milias-Brown Act (MMBA) section 3509(b), and that by the same conduct the County violated MMBA sections 3506 and 3503.[1]

[1] The MMBA is codified at section 3500 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3509(b) provides in part:

> A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an unfair practice charge by the board.

An informal settlement conference was held at the PERB Los Angeles Regional Office on January 20, 2009, but the matter was not resolved.

Formal hearing was held before the undersigned on June 17 and 18, 2009. Upon the submission of post-hearing briefs, the matter was submitted for decision on September 10, 2009.

FINDINGS OF FACT

Most of the facts are undisputed. The County is a public agency within the meaning of MMBA section 3501(c). SEIU is a recognized employee organization within the meaning of Section 3501(b), representing four bargaining units of County employees: Professional; Registered Nurses; Para-Professional; and Supervisors. Four other unions represent a total of nine other units. The County's Employee Relations Resolution (ERR) contains the following sections:

Section 7. Criteria For Establishing An Appropriate Employee Representation Unit:

> In the determination of appropriate employee representation units, the following factors, among others, are to be considered:
>
> 1. Community of interest among the employees.
>
> 2. The history of employee relations in a unit and among other employees of the County.
>
> 3. The effect of the unit on efficient operations of County Service and sound employee relations.
>
> 4. Dividing any classification among two or more units is to be avoided wherever possible.

Section 3503 provides that "Recognized employee organizations shall have the right to represent their members in their employment relations with public agencies."

Section 3506 requires that "Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502."

5. The existence of common skills and duties, comparable working conditions or similar educational requirements.

6. Each unit should be the largest feasible group of employees having an identifiable common or related interest without reference to geographical locations of the same supervisors.

7. No unit shall be established primarily on the basis of the extent to which employees in the proposed unit have organized.

Section 8 lists the already-established units.

Section 10. Modification of Units provides in part:

1. A registered employee organization may propose the modification of an established unit by filing a request with the Human Resources Director (HRD), accompanied by proof that its represented members comprise 15 percent of the employees in the unit. The [HRD] may also propose a modification.

2. No such proposal shall be submitted except between July 1 and September 1, for immediate determination.

4. If no challenge as provided below [i.e., from any other recognized union after notice is provided by the County] is filed and the [HRD] determines that the requested modified unit or units are not appropriate, he shall notify the employee organization which requested the unit of his determination and the reason therefore in writing. The organization may within seven days, modify its request or request the [HRD] to arrange a hearing by the Board on its original request.

The County maintains a roster of per diem employees (PDs), assigned to various positions corresponding to the job classifications in the SEIU units. Some PDs are called on an as-needed basis and some have regular weekly schedules. They have never been accreted to any existing SEIU bargaining unit nor have they been represented in their own unit.

On December 17, 2007, SEIU petitioned to represent a unit consisting of all PDs; attached were authorization cards signed by what SEIU claimed were a majority of PDs. On

January 14, 2008,[2] the County rejected the petition on the basis that ERR Section 8 lists all established units and does not allow for a "non-existent unit," and that the petitioned-for unit did not meet any of the ERR's criteria for an appropriate unit.[3]

On August 6 SEIU submitted a new petition seeking to modify three of its existing units (Professional, Para-Professional and Registered Nurses) by accreting the PDs working in those unit classifications. Attached were authorization cards signed by what SEIU claimed were a majority of PDs in each of the three units, based on payroll data provided by the County. SEIU's petition also stated, with regard to each of the three units, that if there "are any other . . . per diem classifications or job titles that have regular comparable positions in the established . . . unit, to the extent there are others, Local 721 seeks to add them to the . . . Unit as well." On August 12 Ron Komers (Komers), Human Resources Director (HRD), sent a notice to SEIU and to the per diem employees, pursuant to ERR Section 10, that a petition had been filed and that a challenge may be filed within 15 days. No challenge was filed. By letter of September 22 to SEIU, Komers asserted that there were additional per diem employees classified as "Temporary Assistant Per Diem" (TAPD) assigned to each of the three units who were not counted in SEIU's petition. Komers therefore denied the petition on the basis that majority status was not shown for any of the three units.

On September 25 SEIU submitted a modified petition, deleting the classification of TAPD from each of the three units; attached was a showing of interest which SEIU claimed was from a majority of PDs in each unit, plus a greater than 15 percent showing from the already-represented employees, notwithstanding SEIU's contention that majority support was

[2] All dates hereafter refer to the year 2008 unless otherwise specified.

[3] The County's January 2008 denial is not alleged herein as an unfair practice.

not required by either the ERR or the MMBA. On October 1 the County denied the petition on the basis that ERR Section 10.4 allows for the filing of a modified petition only after the HRD has determined that the unit is inappropriate. As Komer's September 22 denial was based on lack of majority support rather than appropriateness, SEIU's only option would be to submit a new petition; however, the designated window period for filing a petition is July 1 to September 1, thus SEIU's September 25 petition was untimely. SEIU sent a response dated October 10 contesting Komers' interpretation of the ERR, claiming its entitlement to file a modified petition, and requesting a hearing before the County Board of Supervisors. Komers responded by letter of November 5, stating that SEIU was not entitled to a Board of Supervisors hearing, and that majority support was required by both the ERR and the MMBA, but that according to his spreadsheets, SEIU's showing fell short in each of the three units.

SEIU does not contest the County's calculations of the numbers of per diem employees eligible in the three units. It does contend, however, that majority support is not required by either the ERR or the MMBA.

ISSUE

1. Did the County unlawfully deny SEIU's August 6 petition?
2. Did the County unlawfully deny SEIU's September 25 petition?
3. If so, what is the appropriate remedy?

CONCLUSIONS OF LAW

A local government agency may not adopt rules and regulations which "would frustrate the declared policies and purposes of the [MMBA] . . . [T]he power reserved to local agencies . . . was intended to permit . . . regulations which are 'consistent with, and effectuate the declared purposes of, the statute as a whole.'" (*Huntington Beach Police Officers' Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 502.) However, when a local agency's

regulation is attacked as unreasonable, the burden of proof is on the attacking party. (*Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331, 338.)

The August 6 petition

The County denied this petition solely on the basis of lack of majority. SEIU contends that majority support is not required by the ERR, the MMBA, or anywhere else.

The County admits that neither the MMBA or the ERR specify a majority showing for a modification petition, but argues that majority support is an axiom of labor law. In support, the County cites MMBA section 3502:

> Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency.

(Emphasis added.)

The County argues that because employees have a statutory right of refusal, they cannot be forced to become members of a unit without their consent. However, Section 3502 protects neither majority or minority rights, but rather speaks to individual employee rights. Thus, even when a union petitions for a new unrepresented unit, presents a showing of majority support, and is recognized by the employer without an election, or when an election is held which the union wins even by a slight majority, the minority becomes a member of the unit in spite of their wishes, as unit membership is not considered participation. However, Section 3502 guarantees that no employee is required to become a member of the union or to participate in its activities. I reject the County's argument.

The County also notes that Educational Employment Relations Act (EERA)[4] section 3544(a) and Higher Education Employer-Employee Relations Act (HEERA)[5] section 3573 require a showing of majority support in order for a union to obtain recognition as the exclusive representative of a unit of employees. Citing *Regents of the University of California (Lawrence Livermore National Laboratory)* (1982) PERB Decision No. 212-H for the proposition that provisions in one act may be imputed to another, the County contends that the MMBA should be interpreted to include these EERA and HEERA provisions. However, the EERA and HEERA provisions refer only to recognition of a new, previously unrepresented unit. On the other hand, PERB Regulation 61450[6] spells out the MMBA requirements for a petition to modify an already existing unit, including at subdivision (a)(1) a petition "To add to the unit unrepresented classifications or positions." PERB Regulation 61450(e)(1) states the required showing of support:

> If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(Emphasis added.)

It is clear that the additions sought here by SEIU would not increase any of the three units by ten percent. To conclude that the MMBA requires majority support in this situation is thus not supported by the plain language of the MMBA, the ERR, or PERB Regulation 61450.

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[4] EERA is codified at section 3540 et seq.

[5] HEERA is codified at section 3560 et seq.

[6] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB regulations, while not controlling over representation issues where a public agency has adopted its own representation rules and procedures (MMBA § 3509(a); PERB Reg. 61000), can be considered when examining a public agency's application of its own rules. (*City of Carson* (2003) PERB Order No. Ad-327-M.)

I find that SEIU has sustained its burden of showing that its August 6 petition did not require majority support. Accordingly, I conclude that the County's denial on this basis was unreasonable and in violation of MMBA section 3509(b). I also conclude that by the same conduct, the County denied SEIU the right to represent its members in violation of Section 3503, and interfered with the rights of employees in violation of Section 3506.

The September 25 petition

This petition was denied due to lack of majority support, a contention which has been found unreasonable. It was also denied on the basis that ERR Section 10.4 does not allow SEIU to file a modified petition under the instant circumstances.

Section 10.4 provides that after the HRD "determines that the requested modified unit or units are not appropriate" and notifies the petitioner in writing, the petitioner may file a modified petition or request a hearing by the Board of Supervisors. The County contends that, as the August 6 petition was denied solely for lack of majority, the HRD never reached a determination of whether the modified units were appropriate; therefore no modified petition may be filed.

If the County's interpretation of Section 10.4 were to be credited, it could privilege the County to reject a petition on any number of procedural grounds, including typographical errors, and refuse to issue a denial until nearly the end of the prescribed window period, thereby depriving the union of the opportunity to file either a modified petition or a new one. I find this position unreasonable, a sort of "Catch 22" whereby new petitions could forever be rejected and recognition could forever be denied. Nothing in the ERR provides for a union's recourse if its original petition is denied on a procedural ground. I therefore find that the only reasonable interpretation of Section 10.4 is that if the HRD determines that the petition is defective for any reason and notifies the petitioner in writing, a modified petition may be filed.

Accordingly, I conclude that the County acted inconsistently with any reasonable interpretation of ERR Section 10.4 and that its conduct violated MMBA section 3509(b). I also conclude that by the same conduct, the County denied SEIU the right to represent its members in violation of Section 3503, and interfered with the rights of employees in violation of Section 3506.

REMEDY

Sections 3509(a) and 3541.3(i) give PERB the power:

> To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

Here, the County violated the MMBA by unlawfully rejecting SEIU's petitions to modify three of its represented units to add per diem employees performing unit work. It is the ordinary remedy in such a case that an order issue directing the respondent to cease and desist from continuing to engage in such conduct. It is also appropriate that the County be ordered to rescind its denial of SEIU's petition of September 25, and to process it through its local rules as a modified petition. It is also appropriate to require the County to post a notice incorporating the terms of the order. It effectuates the purposes of the MMBA that employees be informed by a notice, signed by an authorized agent, that the respondent has acted unlawfully, is being required to cease and desist from its unlawful activity, and will comply with the order. (*Placerville Union School District* (1978) PERB Decision No. 69.)

SEIU also urges that PERB issue an order certifying the modified units sought in its September 25 petition. A similar request was made in *County of Ventura* (2009) PERB Decision No. 2067-M. There, the union argued that merely ordering the County to process its recognition petition through the local rules would result in further delay, and urged that PERB

issue an order directing an election. The administrative law judge, in his proposed decision, which was adopted by the Board, rejected the union's request, stating that it was "premature":

> The establishment of a bargaining unit was not litigated or set forth in the complaint, and an appropriate unit has not been decided by the County's own local rules. Under the legislative scheme set forth in the MMBA and PERB Regulations, recognition, elections and unit determinations are to be resolved according to reasonable ruled adopted by the public agency. [Citations omitted.] Challenges to local rules may be pursued later as an unfair practice charge . . . .

Similarly, the instant complaint does not allege the establishment of the modified units, and their appropriateness has neither been litigated nor decided under the County's ERR. It is therefore premature for PERB to certify a modified unit or order its recognition.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3606 and 3509(b). The County violated the MMBA by unreasonably and unlawfully denying two petitions submitted by Service Employees International Union Local 721 (SEIU) seeking to add per diem employees to three of its already existing bargaining units. The County also violated the MMBA by denying SEIU its right to represent its members and interfered with the rights of its employees.

Pursuant to Section 3509(b) of the Government Code, it hereby is ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Applying the rules of the County's Employee Relations Resolution regarding unit modification unreasonably.

2. Requiring a showing of majority support for a modification petition in contradiction of the California Code of Regulations, title 8, section 61450.

3. Denying an amended modification petition because no determination was made on the original petition that the unit(s) sought was inappropriate.

4. Denying to SEIU the right to represent its members.

5. Interfering with the right of employees to be represented by the employee organization of their choice.

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

1. Rescind the September 22 and October 1, 2008, denials of SEIU's modification petitions;

2. Within 10 days of the date this decision becomes final, begin processing SEIU's September 25, 2008, modified petition in accord with a reasonable interpretation of the Employee Relations Resolution;

3. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to County employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by

the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on SEIU.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§. 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served

on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Ann L. Weinman
Administrative Law Judge