

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



RIVERSIDE SHERIFFS' ASSOCIATION,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent,

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 721 AND LABORERS
LOCAL 777,

Interested Parties.

Case Nos. LA-CE-353-M
LA-CE-438-M

PERB Decision No. 2239-M

February 24, 2012

Appearances: Law Offices of Dennis J. Hayes by Adam E. Chaikin, Attorney, for Riverside Sheriffs' Association; The Zappia Law Firm by Edward Zappia, Attorney, for County of Riverside.

Before McKeag, Dowdin Calvillo and Huguenin, Members.

DECISION

HUGUENIN, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Riverside (County) to a proposed decision (attached) by a PERB administrative law judge (ALJ). The charge in Case No. LA-CE-353-M, filed February 15, 2007, alleged that the County violated the Meyers-Milias-Brown Act (MMBA)¹ by unlawfully denying the Riverside Sheriffs' Association's (RSA) petition for unit modification. The charge in Case No. LA-CE-438-M, filed March 19, 2008, alleged that the County violated the MMBA by unlawfully denying a second modification petition by RSA.

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

In the proposed decision, the ALJ determined that the County's denials of RSA's modification petitions were unlawful and violated MMBA sections 3503, 3506, 3509(b)² and PERB Regulation 32603(f).³

We have reviewed the proposed decision and the record in light of the County's exceptions, the responses thereto, and the relevant law. Based on this review, we find the ALJ's findings of fact and conclusions of law to be well-reasoned, adequately supported by the record, and in accordance with applicable law. Accordingly, we adopt the ALJ's decision as the decision of the Board itself, as supplemented by the brief discussion below regarding the County's exceptions.⁴

PROCEDURAL BACKGROUND

On February 15, 2007, RSA filed Case No. LA-CE-353-M.

On March 19, 2008, RSA filed Case No. LA-CE-438-M.

² MMBA section 3503 guarantees that "[r]ecognized employee organizations shall have the right to represent their members in their employment relations with public agencies." Section 3506 states that public agencies "shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502." Section 3509(b) provides that a violation of these sections "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."

³ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32603 states in part:

It shall be an unfair practice for a public agency to do any of the following:

(f) Adopt or enforce a local rule that is not in conformance with MMBA.

⁴ The County requests 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. Accordingly, the County's request for oral argument is denied.

On July 22, 2008, RSA amended its charge in Case No. LA-CE-438-M.

On August 5, 2008, the Office of the General Counsel issued a complaint in both matters.

On October 7, 2008, Service Employees International Union, Local 721 (SEIU)⁵ and Laborers Local 777 (LIUNA) were joined as Interested Parties by Order.

On July 22, 2009, RSA petitioned to unwind the joinder.

On August 4, 2009, the ALJ denied RSA's joinder petition.

On August 17, 2009, a formal hearing was held.

On December 30, 2009, the ALJ issued the proposed decision.

BACKGROUND

The County's Employee Relations Resolution (ERR) section 10(1) states:

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

On August 26, 2006, RSA filed a petition for modification, seeking to move welfare fraud investigators from the existing inspection and technical unit represented by LIUNA and supervising welfare fraud investigators from the existing supervisory unit represented by SEIU into RSA's existing law enforcement unit. With its petition, RSA submitted three employee authorization cards signed by the supervising welfare fraud investigators and 17 employee authorization cards signed by the welfare fraud investigators. At the time, there were three supervising welfare fraud investigators and approximately 25 welfare fraud investigators. The inspection and technical unit had 1,405 members and the supervisory unit had 1,327 members.

⁵ SEIU did not make an appearance at the formal hearing.

On September 1, 2006, the County, by letter, denied the petition on the basis that there was not a 15 percent showing of support from the two donor units, the inspection and technical unit represented by LIUNA and the supervisory unit represented by SEIU.

On August 29, 2007, RSA filed another petition for modification, seeking to move community service officers (CSOs) from the existing inspection and technical unit represented by LIUNA into RSA's existing law enforcement unit. With its petition, RSA submitted proof of support from 116 CSOs. At the time, there were 125 CSOs. The inspection and technical unit had 1,485 members.

On October 11, 2007, the County, by letter, denied the petition on the basis that there was not a 15 percent showing of support from the donor unit, the inspection and technical unit represented by LIUNA.

THE ALJ'S PROPOSED DECISION

The ALJ concluded that it is virtually impossible for a petitioner to garner support from employees represented by another union, other than those it seeks to add, whom they have no interest in and who have no interest in them.

The ALJ further concluded that, under the County's interpretation of Section 10(1), no severance-type modification petition could ever be processed unless the petitioner seeks to add at least 15 percent of the donor's unit to its own.

Accordingly, the ALJ concluded that the County's interpretation of ERR section 10(1) to require a 15 percent showing of support from the donor units is unreasonable, and that its application of that interpretation to deny RSA's unit modification petitions was unlawful.

THE COUNTY'S EXCEPTIONS

1. The County excepts to the ALJ's conclusion that "... it is virtually impossible for a petitioner to garner support from employees represented by another union (other than

those it seeks to add) whom they have no interest in and who have no interest in them.”

(Proposed Dec. at p. 9)

2. The County excepts to the ALJ’s conclusion that “... taking the County’s position in the most favorable light, no severance-type modification petition could ever be processed unless the petitioner seeks to add at least 15 percent of the donor’s unit to its own. [The ALJ] cannot read section 10(1) to require this, nor has the County suggested such a reading.” (Proposed Dec. at p. 9)
3. The County excepts to the ALJ’s conclusion that “... the County’s interpretation of ERR section 10(1) to require, inter alia, a 15 percent showing of support from the donor unit(s), is unreasonable; and that its application of that interpretation to deny RSA’s unit modification petitions was unlawful.” (Proposed Dec. at p. 10)

In response to the exceptions, RSA generally agrees with the ALJ’s determination on all issues.

DISCUSSION

In its exceptions to the ALJ’s conclusions, the County disputes the ALJ’s determination that it would have been impossible for RSA to obtain 15 percent of support of the donor units. In its exceptions, the crux of the County’s argument is that the County’s interpretation of ERR section 10(1) is reasonable, and the application of that interpretation to deny RSA’s unit modification petitions was lawful.⁶

We disagree with the County’s argument, and find that the ALJ addressed adequately each of the arguments presented by the County in its exceptions. Accordingly, we agree with the ALJ’s determination that the County’s interpretation of ERR section 10(1) is unreasonable.

⁶ The County did not except to the ALJ’s findings of fact. "An exception not specifically urged shall be waived." (PERB Reg. 32300(c).) Accordingly, there is no issue before the Board regarding the ALJ’s findings of fact.

ORDER

For the above reasons and based upon the entire record in this case, the Public Employment Relations Board (PERB) finds that the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3509(b), 3503 and 3506, and PERB Regulation 32603. The County violated the MMBA by unreasonably applying its Employee Relations Resolution (ERR) to refuse to process two petitions filed by Riverside Sheriffs' Association (RSA). By the same conduct, the County also violated the MMBA by denying to RSA the right to represent its members, and by interfering with the rights of its employees to be represented by the employee organization of their choice.

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

A. CEASE AND DESIST FROM:

1. Denying unit modification petitions brought by recognized employee organizations because they are not accompanied by proof of support from 15 percent of the employees in the donor unit(s);
2. Denying RSA's unit modification petitions dated August 26, 2006 and August 29, 2007;
3. Denying RSA its right to represent its members in their employment relations with the County;
4. Interfering with employees' exercise of their rights under the MMBA.

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

1. Within ten (10) workdays of the service of a final decision in this matter, commence processing RSA's above-cited modification petitions pursuant to the procedures in ERR section 10.

2. 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.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB, 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 RSA.

Members McKeag and Dowdin Calvillo join in this Decision.



**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 Nos. LA-CE-353-M and LA-CE-438-M, *Riverside Sheriffs' Association 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 Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. by unreasonably applying its local rules to deny the unit modification petitions filed by Riverside Sheriffs' Association (RSA).

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

A. CEASE AND DESIST FROM:

1. Denying unit modification petitions brought by recognized employee organizations because they are not accompanied by proof of support from 15 percent of the employees in the donor unit(s);
2. Denying RSA's unit modification petitions dated August 26, 2006 and August 29, 2007;
3. Denying RSA its right to represent its members in their employment relations with the County;
4. Interfering with our employees' exercise of their rights under the MMBA.

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

1. Immediately commence processing RSA's above-cited unit modification petitions pursuant to the procedures in Employee Relations Resolution section 10.

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



RIVERSIDE SHERIFFS' ASSOCIATION,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent,

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 721 and LABORERS LOCAL
777,

Interested Parties.

UNFAIR PRACTICE

CASE NOS. LA-CE-353-M

LA-CE-438-M

PROPOSED DECISION

(12/30/2009)

Appearances: Law Offices of Dennis J. Hayes by Adam E. Chaikin, Attorney, for Charging Party; The Zappia Law Firm by Edward Zappia, Attorney, for Respondent; Rothner, Segall, Greenstone & Leheny by Jean Shin, Attorney, for Interested Party Laborers Local 777. Service Employees International Union, Local 721 did not make an appearance.

Before Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

On February 25, 2007, the Riverside Sheriffs' Association (RSA) filed an unfair practice charge in Case No. LA-CE-353-M, alleging that the County of Riverside (County) unlawfully denied its petition for unit modification. On March 19, 2008, RSA filed another unfair practice charge in Case No. LA-CE-438-M alleging that the County unlawfully denied a second modification petition. On August 5, 2008, the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint in each of the two cases, both alleging that by this conduct the County violated the Meyers-Milias-Brown Act (MMBA) and thereby committed an unfair practice under section 3509(b) and PERB Regulation

32603(f), and that by the same conduct the County violated section 3503 and 3506.¹ In its answers to the complaints, the County denied any wrongdoing.

The two cases were consolidated and on September 24, 2008, an informal settlement conference was held, but the matter was not resolved.

Service Employees International Union, Local 721 (SEIU) and Laborers Local 777 (LIUNA) were joined as Interested Parties by Order of October 7, 2008. On July 22, 2009, RSA petitioned to unwind the joinder, which was denied by Order of August 4, 2009. On August 12, 2009, RSA filed two motions to exclude evidence, one regarding the creation and adoption of the local rule at issue, and one regarding the past practice under the local rule.

Formal hearing was held before the undersigned on August 17, 2009. At the hearing, the undersigned announced that all relevant evidence would be accepted, but that RSA's motion could be argued by the parties in their post-hearing briefs and would be taken under consideration in the proposed decision. Upon the submission of post-hearing briefs, the matter was submitted for decision on November 25, 2009.

¹ The MMBA is codified at Government Code section 3500 et seq. Section 3503 guarantees that "[R]ecognized employee organizations shall have the right to represent their members in their employment relations with public agencies." Section 3506 states that public agencies "shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502." Section 3509(b) provides that a violation of these sections "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."

PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32603 states in part:

It shall be an unfair practice for a public agency to do any of the following:

- (f) Adopt or enforce a local rule that is not in conformance with MMBA.

FINDINGS OF FACT

There are virtually no factual disputes. The County is a public agency within the meaning of MMBA section 3501(c). RSA is a recognized employee organization within the meaning of section 3501(b), representing the County's Law Enforcement unit.

MMBA section 3507 provides in pertinent part:

(a) A public agency may 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 under this chapter.

The rules and regulations may include provisions for all of the following:

(3) Recognition of employee organizations.

(c) No public agency shall unreasonably withhold recognition of employee organizations.

Section 3507.1 provides:

(a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a public agency in accordance with this chapter.

For several years the County has maintained an Employee Relations Resolution (ERR), arrived at after consultation with its various unions, including RSA. Section 10 contains procedures for unit modification. Section 10.1 reads:

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

Section 10.4 provides that if no other union challenges the proposed modification and the HRD determines the proposed unit is not appropriate, the petitioner may modify its petition or

request a hearing before the Board of Supervisors. Section 10.5 provides that any other recognized union may challenge the proposed unit; section 10.6 provides that after a challenge, the petitioner may amend its petition; and section 10.7 provides that if the challenge has not been resolved, a hearing shall be held before the Board of Supervisors.

The ERR does not contain any specific provision for a severance petition. Rather, what would otherwise be treated as a severance petition is handled as a modification petition under section 10.

On August 26, 2006, RSA filed a petition for modification, seeking to move Welfare Fraud Investigators from a unit represented by LIUNA and Supervising Welfare Fraud Investigators from a unit represented by SEIU into RSA's existing Law Enforcement unit. The petition was accompanied by proof of support from 17 of the 24-25 of the Welfare Fraud Investigators and from all three of the Supervising Welfare Fraud Investigators. By letter of September 1, 2006, the County denied the petition on the basis that there was not also a 15 percent showing of support from the two donor units. On August 29, 2007, RSA filed another petition for modification, seeking to move Community Service Officers (CSOs) from the same LIUNA unit into RSA's existing Law Enforcement unit, accompanied by proof of support from 116 of the 120-125 CSOs. By letter of October 11, 2007, the County denied this petition on the same grounds.

Tom Prescott (Prescott), Employee Relations Division Manager, testified that in his five-year tenure with the County, modification petitions had been submitted, but all were denied for lack of a 15 percent showing of support from the donor units. Only one modification action was processed: in 2004 the HRD proposed to remove classifications from two of RSA's units and create new units. No showing of interest was required or provided. RSA filed a challenge under ERR section 10.5 and the matter went to hearing under ERR

Section 10.7, before a hearing officer designated by the Board of Supervisors. After hearing, the proposed modifications were denied.

According to the County, ERR section 10.1 must be read to require that all units proposed to be changed by a modification petition, i.e., the donor as well as the recipient unit(s), must show 15 percent support for the modification. The County argues that this is the only reasonable interpretation because, in conformance with the purposes of the MMBA, it “preserv[es] harmonious and stable labor relations . . . [and] . . . avoid[s] the inevitable destabilization of labor relations . . . if such hostile petitions for unit modification were permitted to proceed without adequate support or consent of all affected bargaining unit employees.” The County postulates that if RSA’s interpretation were upheld, it “could repeat such a modification many times and raid the other unions a handful at a time and vice-versa. It would be chaos . . . [and] . . . will create countless unnecessary battles of raiding unions and stealing members.” The County claims it has had a consistent past practice of denying modification petitions without a 15 percent showing from all affected unions. Finally, the County notes that where only a small minority of employees wish to move from one union to another, the HRD has the authority to propose a modification without any showing of support.

LIUNA agrees with the County, and points out that the 15 percent rule would not deprive employees of their right to union representation of their choice, because “if a majority—or significant minority—of employees in a bargaining unit grow displeased with their representation, they can be moved from that bargaining unit into another.”

RSA contends that ERR section 10.1 must be read to require only a 15 percent showing from the recipient unit, which in this case the County has already conceded, as well as a showing from those classifications proposed to be added, which RSA has more than supplied. According to RSA, the County’s interpretation is unreasonable and creates an “impossible

threshold” which “ensures that no modification petition (submitted by an employee organization) will ever get to the hearing stage, in which the appropriateness of the unit would be determined.” [Parenthesis in original.] RSA contends that its interpretation would not destabilize labor relations, as “merely accepting the petitions would not have by itself automatically effected a modification,” because the County and other unions could challenge the petitions and protect their interests pursuant to an appropriateness hearing under ERR Section 10.7. RSA also contends that the County’s past practice has been that a hearing, when held, is before a neutral arbitrator rather than the Board of Supervisors, pointing to Prescott’s testimony regarding the 2004 modification petition brought by the HRD.

ISSUE

Did the County unreasonably apply ERR Section 10.1 to deny RSA’s modification petitions?

CONCLUSIONS OF LAW

The MMBA itself does not contain any requirements for representation petitions; rather, as cited above, public agencies are authorized to adopt their own rules. However, the rules must be reasonable. In *International Brotherhood of Electric Workers v. City of Gridley* (1983) 34 Cal.3d 191, the California Supreme Court analyzed the legislative intent:

It is now well settled that the Legislature intended that the MMBA “set forth reasonable, proper and necessary principles which public agencies must follow in their rules and regulations for administering their employer-employee relations . . .” and that “if the rules and regulations of a public agency do not meet the standard established by the Legislature, the deficiencies of those rules and regulations as to rights, duties and obligations of the employer, the employees, and the employee organization, are supplied by the appropriate provisions of the act.”

(Citations omitted.)

PERB followed this reasoning in *County of Imperial* (2007) PERB Decision No. 1916-M, where it struck down a section of the County's Employer-Employee Relations Policy which required that a union seeking recognition must receive votes from a majority of eligible employees rather than a majority of votes cast, as provided in MMBA section 3507.1(a)²:

The MMBA allows a considerable degree of local regulation, but where it sets a standard, local divergence is not allowed. . . . Thus, when looking at a disputed rule, the inquiry does not concern whether PERB would find a different rule more reasonable. Rather, the question is whether a disputed rule is consistent with and effectuates the purposes of the express provisions of the MMBA. . . . [T]he standards established by the MMBA "may not be undercut by contradictory rules or procedures that would frustrate its purpose."

(County of Imperial, *supra*, PERB Decision No. 1916-M; citations omitted.)

Here, ERR section 10.1 requires that any modification petition be "accompanied by proof that its represented members comprise 15 percent of the employees in the unit." What does this mean? The language is woefully ambiguous—it makes no reference to a percentage of employee support for the petition, but instead refers to the percentage of employees represented by the petitioner. Where language is silent or ambiguous, the meaning may be ascertained by examining extrinsic evidence including past practice, bargaining history, or the parties' mutual understanding. (*City of Riverside* (2009) PERB Decision No. 2027-M; *San Diego Unified School District* (2007) PERB Decision No. 1883-E.) Here, the parties each expressed their understanding that some 15 percent showing of interest is required. Accordingly, I accept this evidence and find that "15 percent" refers to a showing of interest.

² Section 3507.1(a) states: "Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a public agency in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required."

But the language is also ambiguous as to which group of employees must provide this showing of support—the petitioner’s already-existing unit, the classifications sought to be added to the unit, and/or the entire unit from which the new classifications are sought to be removed. Here, the parties vigorously disagree: the County urges that 15 percent support must come from the donor as well as the recipient unit(s); RSA argues that support is only required from the recipient unit and from those classifications proposed to be added.

In *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 305, the court stated the following axiom:

Where the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair and harmonious with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.

The court has applied this principle to the interpretation of a collective bargaining agreement in *National City Police Officers’ Assn. v. City of National City* (2001) 87 Cal.App.4th 1274.

I find it appropriate to apply this principle as well to the ERR, which was arrived at after consultation with the County’s unions, including RSA, and is therefore sufficiently similar to an MOU. In doing to, I find that RSA’s interpretation is reasonable, while the County’s is not.

When a group of employees want to leave their current unit and be represented either in a different unit or by a different union, the usual process is by way of severance, where PERB has required a majority showing only from the employees in the petitioned-for unit. (*State of California* (2007) PERB Order No. A367-S.) As regards the MMBA, PERB Regulation

section 61400,³ which addresses severance petitions, does not require any showing of interest. Under the ERR, however, what would otherwise be considered a severance request is treated as a unit modification request. In *Salinas Union High School District* (2002) PERB Order No. A315-E, PERB certified a modified unit with a showing of support only from the employees to be added to the unit. PERB Regulations do not require any showing of support for modification petitions, except that if the proposed addition would increase the existing unit by 10 percent or more, section 61450(e)(1) requires a majority showing among the employees to be added; and if the employees to be added are also sought in another union's petition for initial recognition or certification, section 61450(e)(2) requires a 30 percent showing among the employees to be added. Here, employees in the classifications sought to be added to RSA's unit (or severed from the LIUNA and SEIU units) have shown overwhelming support for the petition. In addition, the County has assumed that RSA has majority support from its already-established recipient units.

The County contends that RSA must also show support from at least 15 percent of employees in the LIUNA and SEIU units. However, it is virtually impossible for a petitioner to garner support from employees represented by another union (other than those it seeks to add) whom they have no interest in and who have no interest in them. Thus, taking the County's position in the most favorable light, no severance-type modification petition could ever be processed unless the petitioner seeks to add at least 15 percent of the donor's unit to its own. I cannot read section 10.1 to require this, nor has the County suggested such a reading.

³ MMBA section 3509(a) gives PERB the power to "adopt rules to apply in areas where a public agency has no rule." Thus, PERB Regulations section 61000 et seq. contain requirements for recognition petitions in the absence of local rules.

The County argues that if RSA's position were upheld, it would allow unions to raid each other often, in small increments, which would disturb labor relations. However, ERR section 10.5-10.7 requires that, if the HRD or another union objects to the petition and it is not modified, a hearing be held on the appropriateness of the unit. Thus, if it is found after such a hearing that the sought-after employees appropriately belong in the new unit rather than the old, labor relations will be improved, as future bargaining would take place in more appropriate units. The County recognizes this in ERR section 10.1, which allows the HRD to propose a modification with no restriction regarding the number of employees involved and with no showing of support required. Further, MMBA section 3502, which guarantees to employees "the right to form, join, and participate in the activities of employee organizations of their own choosing," would be better served, as it would give the sought-after employees their choice of representative. LIUNA argues that if a "significant minority" of employees wish to move, their section 3502 rights are protected under the County's interpretation. However, section 3502 is not restricted to any "significant" number, but applies to each individual employee. Nor can I find that section 3502 gives to employees, or to unions, the right to retain employees who do not wish to be retained.

Accordingly, I find that the County's interpretation of ERR section 10.1 to require, *inter alia*, a 15 percent showing of support from the donor unit(s), is unreasonable; and that its application of that interpretation to deny RSA's unit modification petitions was unlawful.

The County argues that its past practice has been to deny modification petitions without a 15 percent showing. RSA argues that this evidence should not be accepted. However, even if accepted, there is no evidence that RSA concurred in these decisions. Further, these denials were also unreasonable, as they were also based on a lack of support from the donor units.

REMEDY

MMBA section 3509(b) states in part:

A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency . . . shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board.

Having found that the County violated the MMBA by refusing to process RSA's unit modification petitions, it is appropriate that the County cease and desist from such unlawful conduct. It is also appropriate that the County be ordered to process RSA's petitions pursuant to the procedures set forth in ERR section 10.

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. (*County of Riverside* (2003) PERB Decision No. 1577-M.)

RSA urges that, if a hearing is required to determine the appropriateness of the requested units, an order issue that the hearing be held before a neutral arbitrator rather than the Board of Supervisors. RSA relies on how the HRD's 2004 modification proposal was handled. However, according to Prescott's uncontradicted testimony, it was the Board of Supervisors who appointed a hearing officer, and there is no evidence that any other party participated in the hearing officer's selection or verified his neutrality. This single occasion, under these circumstances, does not warrant an order contradicting ERR section 10.7, that if a hearing is required, it be held before the County's Board of Supervisors.

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 or Act), Government Code section 3509(b), 3503 and 3506, and PERB Regulation section 32603. The County violated the MMBA by unreasonably applying its Employee Relations Resolution (ERR) to refuse to process two petitions filed by Riverside Sheriffs' Association (RSA). By the same conduct, the County also violated the MMBA by denying to RSA the right to represent its members, and by interfering with the rights of its employees to be represented by the employee organization of their choice.

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. Denying unit modification petitions brought by recognized employee organizations because they are not accompanied by proof of support from 15 percent of the employees in the donor unit(s);
2. Denying RSA's unit modification petitions dated August 26, 2006, and August 29, 2007;
3. Denying RSA its right to represent its members in their employment relations with the County;
4. Interfering with employees' exercise of their rights under the MMBA.

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

1. Within ten (10) workdays of the service of a final decision in this matter, commence processing RSA's above-cited modification petitions pursuant to the procedures in ERR section 10.

2. 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.

3. 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 RSA.

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 Public Employment Relations Board (PERB or 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