

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATIONARY ENGINEERS LOCAL 39,
INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL-CIO,

Charging Party,

v.

COUNTY OF YOLO,

Respondent.

Case No. SA-CE-704-M

PERB Decision No. 2316-M

April 23, 2013

Appearances: Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO; Daniel C. Cederborg, Assistant County Counsel, for County of Yolo.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO (Local 39) to the proposed decision of a PERB administrative law judge (ALJ). The ALJ found that the County of Yolo (County) did not violate its local rules or the Meyers-Milias-Brown Act (MMBA)¹ in its handling of a representation petition filed by the Yolo County Probation Association (YCPA). The petition sought unit modification, decertification and recognition on behalf of Probation Department peace officer classifications in the County's General Unit, exclusively represented by Local 39. The ALJ reasoned that section 3508, subdivision (a) grants peace officers the right to join or participate in employee organizations made up solely of peace officers, which right cannot be

¹ The MMBA is codified at Government Code section 3500 et al. All further statutory references are to the Government Code.

denied by a public agency, provided that appropriate unit determination standards under local rules are met.

The Board has reviewed the entire record in this matter including Local 39's statement of exceptions and supporting brief and the County's response. Based on this review, the Board concludes that the County violated its local rules, and therefore the MMBA, in its handling of the representation petition filed by YCPA. We therefore do not adopt the ALJ's proposed decision as the decision of the Board itself for the reasons discussed below.

PROCEDURAL HISTORY

On January 7, 2011, Local 39 filed an unfair practice charge against the County. On January 18 and 19, 2011, Local 39 filed an amended charge and request for injunctive relief, respectively. The County responded to the request for injunctive relief on January 24, 2011. On January 26, 2011, PERB denied the request for injunctive relief and issued an unfair practice complaint alleging that on November 9, 2010, the County acted inconsistent with and violated its local rules by unilaterally removing seven job classifications from the General Unit represented by Local 39 and placing them in another bargaining unit represented by a different exclusive representative without Local 39's agreement. The complaint alleged that the County's conduct constituted violations of MMBA sections 3503 (an employee organization's right to represent members), 3505 (a public agency's obligation to meet and confer), 3506 (a prohibition on interference or discrimination against public employees because of their exercise of protected rights) and 3509, subdivision (b) (violation of MMBA or a public agency's local rules processed as unfair practice charge), and PERB Regulation 32603, subdivisions (a), (b), (c) and (g).²

² PERB Regulations can be found at California Code of Regulations, title 8, section 31001 et seq.

An informal settlement conference was conducted on February 11, 2011, but the dispute was not resolved. On June 22, 2011, the County answered the complaint, admitting six allegations, denying all substantive allegations and any violations of law, and asserting affirmative defenses.

On October 19, 2011, a formal hearing was held in Sacramento, and on December 20, 2011, the case was submitted for decision following receipt of Local 39's post-hearing brief. The County did not file a brief. Thereafter, the ALJ's proposed decision issued on February 2, 2012.

On February 17, 2012, Local 39 filed a timely statement of exceptions. On March 8, 2012, the County filed a timely response.

SUMMARY OF FACTS

Since at least February 6, 2005, Local 39 has been the exclusive representative of over 600 County employees in 255 job classifications comprising the General Unit.³ The General Unit includes six peace officer classifications used in the Probation Department: deputy probation officer I and II; senior deputy probation officer; detention officer I and II; and senior detention officer.

On July 2, 2010, Jennifer Ellasces (Ellasces), president of YCPA and deputy probation officer II, filed a petition for unit modification, recognition and decertification (YCPA petition) seeking to modify the General Unit to form a separate bargaining unit of peace officers.⁴

³ The County and Local 39 entered into memoranda of understanding covering the General Unit for the periods November 1, 2007 through October 31, 2010 and November 1, 2010 through October 31, 2012.

⁴ The YCPA petition sought to include the classification of probation aide in the new unit. Although the record is unclear, the probation aide classification initially appears to have been removed from the General Unit, but ultimately returned. The record is unclear as to the

According to the YCPA petition, as of July 1, 2010, there were 98 peace officers represented in these classifications. The petition was accompanied by the requisite number of signatures. The YCPA petition requested recognition of YCPA as the exclusive representative for the new unit; it also requested decertification in that the employees in the Probation Department classifications no longer wished to be represented by Local 39. The YCPA petition was filed based on “peace officer rights to self-representation under Government Code Section 3508(a).” As stated in the YCPA petition, the classifications proposed to be represented by YCPA are full-time peace officer positions under Penal Code section 830.5.

By letter dated July 13, 2010, Mindi Nunes (Nunes), director of human resources, notified Bill Kelly of Local 39 that the County had received two decertification petitions in the General Unit. The petition filed by the Yolo County Public Employees Association (YCPEA) met the decertification petition requirements under the local rules, i.e., documentation of at least 30 percent support evidencing doubt that the General Unit employees wished to continue to be represented by Local 39.⁵ The other petition referenced in Nunes’s letter was the YCPA petition.

By letter dated July 14, 2010, Nunes informed Ellasces that the decertification component of the YCPA petition did not comply with local rules in that it failed to provide proof that 30 percent of the employees in the General Unit no longer wished to be represented by the incumbent, Local 39. Regarding YCPA’s requests for unit modification and recognition, Nunes stated that the County was “unable to make an affirmative determination

mechanism by which this occurred. Unlike the probation and detention officer classifications, probation aides do not have peace officer/public safety officer status.

⁵ An election was held and Local 39 prevailed.

that it meets the requirements” of the local rules regarding unit determinations. Nunes offered to meet with Ellasces to discuss the deficiencies of the YCPA petition.

That meeting took place on July 20, 2010. According to YCPA, Nunes stated that she had denied the YCPA petition because she did not have sufficient staff to engage in collective bargaining with a newly recognized bargaining unit; and that it was her intent to include the classifications represented by YCPA in one of the three existing law enforcement bargaining units, the Yolo County Investigators Association (YCIA),⁶ the Yolo County Deputy Sheriffs Association (DSA)⁷ or the Yolo County Correctional Officers Association (YCCOA)⁸.

On July 22, August 19 and September 15, respectively, Ellasces met with representatives of the existing law enforcement bargaining units to discuss Nunes’s proposal for merger. None of the three bargaining units favored merger with the YCPA-represented Probation Department classifications.

By letter dated July 25, 2010, Ellasces objected to Nunes’s determination that “the appropriate unit for the YCPA is one of the three existing law enforcement units in Yolo County.” Ellasces also requested the intervention of the California State Mediation and Conciliation Service (SMCS) pursuant to section 3507.1.

⁶ YCIA is the exclusive representative of investigators in the District Attorney’s Office in a 10-12 employee unit.

⁷ DSA is the exclusive representative of deputy sheriffs in a 64-65 employee unit.

⁸ YCCOA is the exclusive representative of correctional officers, animal services officers and technicians in a 103-104 employee unit.

The parties met with a mediator from SMCS on September 22, 2010. According to Ellasces, Nunes stated her intent to submit a resolution to the Board of Supervisors combining the three existing law enforcement units, and the classifications represented by YCPA, into a single bargaining unit. Mediation proved unsuccessful, and so on October 7, 2010, YCPA appealed Nunes's unit determination decision to the Board of Supervisors. YCPA continued to assert the peace officer/public safety officer right to a separate bargaining unit under section 3508, subdivision (a).

By letter dated October 26, 2010, Nunes informed Stephen Hatch (Hatch), business representative for Local 39, that YCPA's requests for unit modification and recognition had been denied; that YCPA had appealed that decision to the Board of Supervisors; and that the Board of Supervisors had scheduled the appeal to be heard on November 9, 2010, at a regularly scheduled board meeting.

Nunes prepared a memorandum dated November 9, 2010, for the Board of Supervisors regarding YCPA's appeal. Nunes reported that the fiscal impact of meeting and conferring with a ninth bargaining unit⁹ would amount to \$42,860 in additional staffing costs for fiscal year 2011. Nunes's memorandum states in pertinent part:

Since the County has the right under the Meyers-Milias-Brown Act (MMBA) to determine the appropriate units, it is feasible to place the probation employees in another appropriate peace officer unit. The County currently has three bargaining units composed of peace officers: Deputy Sheriff's Association, Correctional Officers Association, and the Investigator's Association. Each of these associations was approached by YCPA and each declined to voluntarily participate in a merger of peace officer classifications.

There are currently nine Deputy Probation Officer I, 22 Deputy Probation Officer II, six Senior Deputy Probation Officer, no

⁹ At the PERB formal hearing, Nunes testified that the County had already bargained for a ninth bargaining unit, so the YCPA proposal actually amounted to a tenth unit.

Detention Officer I, 46 Detention Officer II, and six Senior Detention Officer employees. These classifications are the only public safety classifications in the General Unit.

Currently the Deputy Sheriff's Association includes 65 Deputy Sheriff unit members. The Correctional Officers Association includes 104 unit members: 88 Correctional Officers, seven Animal Services Officers, two Animal Care Technicians, four Sheriff's Operations Technicians, and two Sheriff's Service Technicians. The Investigator's Association includes 12 DA Investigator II unit members.

There remains a recognized community of interest which is shared by the classifications in the Correctional Officers unit and the Investigators Association. All classifications share the peace officer identification requirement and they have similar paramilitary structures. All classifications are engaged in public safety occupations.

The alignment of the Probation classifications with the Correctional Officers Association or the Investigators Association stabilizes the administration of employer-employee relations in that public safety employees are represented by an organization exclusively made up of peace officers and not subordinate to any other non-peace officer employee organization.

At the hearing on November 9, 2010, the Board of Supervisors took the following action regarding YCPA's appeal:

Supervisor Provenza made a motion to continue the public hearing to a date certain as the Board [of Supervisors] considers non-proliferation of bargaining units, and while staff works with the various bargaining units regarding possible consolidation. Motion failed for lack of a second.

Minute Order No. 10-222: Motion to consolidate the Yolo County Probation Association with the Yolo County Investigators Unit.

MOVED BY: Rexroad / SECONDED BY: Chamberlain

AYES: Rexroad, Chamberlain, McGowan, Thomson

NOES: Provenza

ABSTAIN: None

ABSENT: None

Hatch testified at the PERB formal hearing that he initially supported Nunes's recommendation to deny YCPA's requests for unit modification and recognition. When Nunes informed him, however, that she was required to remove the Probation Department classifications from the General Unit, Hatch "modified what I said a little bit and informed the Board [of Supervisors] that I don't believe that that was accurate and if they should move forward with that action, the Union would file an unfair labor practice." When questioned on cross examination whether peace officers have "a right to be in an exclusive unit that only has peace officers in it," Hatch responded, "I don't know."

By the Board of Supervisors' action on November 9, 2010, the classifications represented by YCPA were effectively placed into the Investigators Unit represented by YCIA for collective bargaining purposes. By letter to Nunes dated December 7, 2010, YCIA confirmed that Nunes had agreed to request that the Board of Supervisors entertain an appeal by YCIA from the action taken by the Board of Supervisors on November 9, 2010. YCIA's letter states that the Board of Supervisors' decision had resulted in "dramatically adverse effects for the members of both associations." The letter also states that Nunes had already begun implementing changes to the terms and conditions of employment for the affected Probation Department classifications "that are causing a loss in pay and benefits." The letter goes on to state that Nunes "introduced into a unit of less than ten investigators over 80 new represented employees, overwhelming the investigator unit and requiring changes to their internal procedures, by-laws and board structure that were not anticipated." The letter requested that Nunes and the Board of Supervisors reconsider the Board of Supervisors' action and "agree to establish the Yolo County Probation Association as a stand-alone unit."

By action taken by the Board of Supervisors on January 11, 2011, the Probation Department classifications that had been removed from the General Unit and placed into the

Investigators Unit at the November 9, 2010 meeting were removed from the Investigators Unit and placed into a separate unit to be represented by YCPA. As described by Nunes at the PERB formal hearing, the “Board [of Supervisors] subsequently took action to undo their prior action and place probation officers, [and] detention officers in their own bargaining unit.”

The County’s local rules are contained in the Employer-Employee Organization Relations Resolution No. 89-113 (EEORR or local rules), which provide:

Sec. 2. Definitions.

[¶ . . . ¶]

1. “**Unit Modification**” means to add positions to or subtract positions from an established bargaining unit in order to clarify or reflect a more appropriate unit composition.

Article II – Representation Proceedings

Sec. 3. Filing of Recognition Petition of Employee Organization.

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer [setting forth certain information and documentation, along with 30 percent employee proof of support]:

[¶ . . . ¶]

Sec. 4. County Response to Recognition Petition.

Upon receipt of the Petition, the Employee Relations Officer shall within thirty (30) days determine whether:

- a. There has been compliance with the requirements of the Recognition Petition, and
- b. The proposed representation unit is an appropriate unit in accordance with Sec. 6 of this Article II.

[¶ . . . ¶]

Sec. 5. Open Period for Filing Challenging Petition.

[§. . . §]

Sec. 6. Policy and Standards for Determination of Appropriate Units.

. . . Factors to be considered shall be:

- a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- b. History of representation in the County and similar employment; . . .
- c. Consistency with the organizational patterns of the County.
- d. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- e. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.
- f. The right of professional employees to be represented separately from non-professional employees.

[§. . . §]

Sec. 7. Election Procedure.

[§. . . §]

An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. . . .

[§. . . §]

Sec. 8. Procedure for Decertification of Exclusively Recognized Employee Organization.

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of

January of any year following the first full year of recognition or during the period between 150 and 120 days prior to the expiration date of a Memorandum of Understanding then having been in effect three (3) years from date of ratification or less, whichever occurs later. . . .

[¶ . . .]

The Employee Relations Officer shall thereupon arrange for a secret ballot election Such election shall be conducted in conformance with Sec. 7 of this Article II.

[¶ . . .]

Sec. 9. Procedure for Modification of Established Appropriate Units.

Requests by employee organizations for modification of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Sec. 8 of this Article II. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Sec. 3 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Sec. 6 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

[¶ . . .]

Sec. 10. Appeals.

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article II may, within fifteen (15) days of notice thereof, request the intervention of the California State Mediation and Conciliation Service . . . or may, in lieu thereof or thereafter appeal such determination to the County Board of Supervisors

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec. 3); Challenging Petition (Sec. 5) or Decertification of Recognition Petition (Sec. 8) – or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Sec. 8) – has not been filed in compliance with the applicable provisions of this Article may, within fifteen (15) days of notice of such determination, appeal the determination to the County Board of Supervisors for final decision.

Appeals to the County Board of Supervisors shall be filed in writing with the Clerk to the Board, . . . The County Board of Supervisors shall commence to consider the matter within thirty (30) days of the filing of the appeal. The County Board of Supervisors may, in its discretion, refer the dispute to a third party for hearing and recommendations. Any decision of the County Board of Supervisors on the use of such procedure, and/or any decision of the County Board of Supervisors determining the substance of the dispute shall be final and binding.

[¶ . . . ¶]

Article V – Miscellaneous Provisions

Sec. 18. Construction.

This Resolution shall be administered and construed as follows:

- a. Nothing in this Resolution shall be construed to deny to any person, employee, organization, the County, or any authorized officer, body or other representative of the County, the rights, powers and authority granted by Federal or State law.

PROPOSED DECISION

The ALJ identified the dispute as whether the County violated the EEORR and the MMBA in its handling of the YCPA petition. In concluding that the County complied with its local rules, the ALJ reasoned that the decision of the Board of Supervisors to merge the YCPA proposed unit of Probation Department classifications with the YCIA unit of investigators from the District Attorney's Office was final and binding. Despite this conclusion, the ALJ also held that Nunes was obligated to process YCIA's appeal of that decision. The ALJ stated:

Once the Board of Supervisors separated the Probation Department classes from the General Unit, Nunes could and did recommend approval of the YCPA unit modification petition for a separate unit of these public safety officers to resolve the YCIA appeal. On January 11, 2011, the Board of Supervisors adopted Nunes' recommendation to grant the unit modification petition. Following that authorization, the ERO granted the petition for recognition, and YCPA became the exclusive representative for the Probation unit.

Citing section 3508, subdivision (a), the ALJ held that the MMBA grants peace officers throughout the state the affirmative right to join or participate in peace officer-only employee organizations, which right cannot be denied or prohibited by a public agency. The ALJ stated:

Nothing in section 3508(a) mandates or requires peace officers to exercise this right to separateness, and mixed units of peace officers and non-public safety officers exist throughout MMBA jurisdictions, similar to the General Unit exclusively represented by Local 39 prior to the current dispute. Once invoked, however, section 3508(a) confers a right to be separate for peace officers, providing appropriate unit determination standards under local rules are met.

The ALJ concluded that Local 39 failed to meet its burden of proving that the County violated its EEORR, and therefore the MMBA, or that the County failed to bargain in good faith.

LOCAL 39'S STATEMENT OF EXCEPTIONS

Local 39 excepts to the findings of fact concerning events that occurred after the Board of Supervisors' meeting on November 9, 2010. Local 39 argues that the complaint, and underlying unfair practice charge, are based solely on the action taken by the Board of Supervisors on November 9, 2010, and the events leading up to that action.

The remainder of Local 39's exceptions can be summarized as follows. On appeal of Nunes's decision to deny the YCPA petition, the Board of Supervisors was required to act only on the requests by YCPA therein made. Instead, it acted on its own motion to do something no employee organization had requested. As stated by Local 39, "by not voting on the petition the Board of Supervisors in effect denied the petition and did something that no organization had petitioned for." (Statement of Exceptions, p. 2, lns. 17-19.)

The action taken by the Board of Supervisors on November 9, 2010, violated the local rules because it lacked notice; was made without a determination of whether the merged unit was appropriate in violation of the local rules; and accomplished a de facto decertification of

Local 39. Finally, Local 39 contends that the County's actions were unlawful notwithstanding the fact they were taken in furtherance of the statutory objective of granting peace officers the right to their own bargaining unit under section 3508, subdivision (a).

THE COUNTY'S RESPONSE

The County contends that the ALJ reached the proper result in dismissing the complaint. The County argues that the central issue concerns the right of peace officers to a bargaining unit of their own under section 3508, subdivision (a). The County claims that “[o]verturning the proposed decision would result in a frustration of this statute, placing peace officer employees back in the general unit against their will.” The County downplays its own responsibility in this matter by asserting that “the complexity of the situation facing the County and the relevant employee organizations admittedly resulted in a somewhat convoluted resolution.” The County admits that its conduct was “at worst” only “a sloppy implementation of the County’s EEORR in difficult circumstances.”

DISCUSSION

Overview

Entailed here is the intersection of two equally important statutory mandates. One mandate is found in section 3508, subdivision (a), which states that a governing body may not prohibit the right of full-time peace officers to join employee organizations composed solely of peace officers. The other mandate is found in section 3507, subdivision (a), which authorizes public agencies to adopt reasonable rules and regulations for the administration of employer-employee relations under the MMBA, including rules and regulations governing representation proceedings. Under PERB precedent, a bargaining unit may be comprised of both peace officer and non-peace officer classifications. (*County of Calaveras* (2012) PERB Decision No. 2252-M.) Such a unit is commonly referred to as a mixed unit.

Bargaining units, whether mixed or not, need only meet the condition that they be “appropriate.”¹⁰ Under section 3508, subdivision (a), however, employees in an otherwise appropriate unit who are full-time peace officers have the right to join employee organizations made up solely of peace officers, whether in a stand-alone unit or as part of a larger peace officer unit.¹¹ Peace officers electing to exercise that right do not do so in a vacuum. Like other employees of MMBA employers, they do so by availing themselves of the representation rules and procedures provided for under the local rules. So long as the rules are reasonable and

¹⁰ “The criteria for determining an appropriate unit may include, but should not be limited to, such factors as community of interest among the employees, history of representation, and the general field of work.” (See, e.g., *Reinbold v. City of Santa Monica* (1976) 63 Cal.App.3d 433, 440.)

¹¹ As the court stated in *Santa Clara Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal.App.3d. 255, 264 (*Santa Clara*):

Although a given peace officer organization *may* be entitled to recognition as a separate representation unit, the mere fact that a group of public employees form an organization does not necessarily entitle them to either a separate representation unit or “recognized employee organization” status. [¶] A clear distinction must be drawn between public employees’ rights to organize and their right to separate bargaining units. As this court stated in *Organization of Deputy Sheriffs [of San Mateo County, Inc. v. County of San Mateo]* (1975) 48 Cal.App.3d 331] (at p. 339): “We have noted that MMB differentiates between the designation of appropriate bargaining units and the formation of employee organizations.” (§ 3501, subds. (a), (b).) A “recognized employee organization” is one which has been “formally acknowledged by the public agency as an employee organization” (§ 3501, subd. (b)) as being entitled to “meet and confer” with the governing body on labor/management problems (§ 3505). Representation units may comprise several recognized employee organizations so long as the unit is appropriate. Further, *Organization of Deputy Sheriffs* points out that “[the] plural use of ‘employee organizations’ [in section 3508, subdivision (a)] appears to recognize the possibility of the existence of more than one peace officer employee’s organization within the agency.” (48 Cal.App.3d at pp. 341-342.)

(Emphasis in original.)

provide a means to effectuate the desired change in representation,¹² the right afforded peace officers under section 3508, subdivision (a), is adequately protected.¹³

Here, the legal dispute is between the incumbent union, Local 39, and the County. Local 39 is rightly concerned about a loss in membership, which it argues was occasioned by the County's failure to comply with its own local rules. While we agree with Local 39 that the County violated its local rules, we also recognize that the YCPA-represented Probation Department peace officers were not at fault. They no longer desired to remain in a mixed unit and attempted to exercise their statutory right to form an employee organization comprised solely of peace officers. They complied with the local rules by filing a petition within the applicable window period, providing all the necessary information and justifications, citing to the peace officers' statutory right under section 3508, subdivision (a), at every turn. Through this decision, we seek to harmonize the right of peace officers to a peace officer-dedicated employee organization with the right of all public employees and employee organizations to rely on public agencies to comply with their own local rules in all representation matters.

Mixed Units and Section 3508

Section 3508, provides in pertinent part as follows:

- (a) The governing body of a public agency may, in accordance with reasonable standards, designate positions or

¹² PERB will apply its own MMBA representation rules if there are no local public agency representation rules that apply. (*County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M.)

¹³ See, e.g., *Organization of Deputy Sheriffs of San Mateo County, Inc. v. County of San Mateo* (1975) 48 Cal.App.3d 331, 340. In a case involving management and confidential employees under section 3507.5, the court stated:

Insofar as such rules and regulations are reasonable and are promulgated after consultation with such organizations, the "absolute" right to join and to be represented by an organization of the employee's choice is subject to such rules.

classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in these positions or classes of positions to form, join, or participate in employee organizations where it is in the public interest to do so. However, the governing body may not prohibit the right of its employees who are full-time "peace officers," as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of those peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.

(d) The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section.

Thus, as the Board held in *County of Calaveras, supra*, PERB Decision No. 2252-M, while section 3508, subdivision (a), grants full-time peace officers the affirmative right to join or participate in peace officer-only units, nothing in that section requires peace officers to exercise this right nor prohibits them from being in mixed units if they so choose. So long as the mixed unit is an appropriate unit, the determination of the local agency will be found to be reasonable. (*City of Glendale* (2007) PERB Order No. Ad-361-M.)

The issue here is not whether the General Unit constitutes an appropriate unit. The assumed appropriateness of the General Unit notwithstanding, the Probation Department peace officers invoked their right under section 3508, subdivision (a), to join or participate in an employee organization "composed solely of those peace officers." While section 6(f) of the EEORR recognizes the "right of professional employees to be represented separately from

non-professional employees” in recognition of section 3507.3 of the MMBA,¹⁴ the EEORR contains no corresponding recognition for peace officers under section 3508, subdivision (a).

In describing the scope of the right under section 3508, the court in *San Bernardino County Sheriff's Employees' Benefit Assn. v. San Bernardino County Board of Supervisors* (1992) 7 Cal.App.4th 602 (*San Bernardino*)¹⁵ stated:

Section 3508 grants certain peace officers a right to be represented by a group composed entirely of other peace officers. In *Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal.App.3d 255 [124 Cal.Rptr. 115], peace officers sought to be removed from an “All County” representation unit. The court granted the relief sought, explaining, “It is clear from section 3508 that peace officers have the right to a separate public employees organization, . . . The only question is whether there is a concurrent right to a separate all peace officer representation unit. We have concluded that section 3508, read together with other sections of the Meyers-Milias-Brown Act (MMB Act), makes it equally clear that peace officers are entitled to such separate representation unit.” (*Id.*, at p. 259.) The court in *Redondo Beach Police Officers Assn. v. City of Redondo Beach* (1977) 68 Cal.App.3d 595 [137 Cal.Rptr. 384] also determined that “Section 3508 is clear: All peace officers are entitled to be represented by a group from which others are excluded.” (*Id.*, at p. 597.)

¹⁴ Section 3507.5 authorizes a local public agency to designate management and confidential employees and to restrict them from representing an organization that includes non-management employees. (See *Tehema County Superior Court* (2008) PERB Decision No. 1957-C [interpreting the Trial Court Employees Protection and Governance Act in *pari materia* with section 3507.5 of the MMBA, PERB held that a local representation rule denying representation rights to managerial employees seeking to be represented in a unit separate from rank-and-file employees represented by same union to be unreasonable].)

¹⁵ The court’s decision in *San Bernardino* was overruled with respect to San Bernardino County designating a welfare fraud investigator or inspector as a peace officer under section 3508. (§ 3508, subd. (b)(3).) The decision was also overruled “to the extent that it holds that this section prohibits the County of San Bernardino from designating the classifications of Probation Corrections Officers and Supervising Probation Corrections Officers as peace officers.” (§ 3508, subd. (c)(3).)

The YCPA Petition and the County's Local Rules

YCPA petitioned for modification, recognition and decertification with respect to the Probation Department full-time peace officer classifications. The decertification component of the petition was denied for lack of proof of support. Although Local 39 argues that there was a de facto decertification of Local 39, Local 39 was not removed as the exclusive representative of the General Unit. The modification and recognition components of the petition were denied by Nunes because of the potential difficulty and expense of engaging in collective bargaining with an additional bargaining unit of County employees, i.e., the proliferation of bargaining units. The modification and recognition determination went before the Board of Supervisors on November 9, 2010. The issue presented here is whether the action taken by the Board of Supervisors on November 9, 2010, in response to the YCPA petition violated the County's local rules.¹⁶

An alleged violation of a public agency's local rules may be challenged through the unfair practice procedure pursuant to section 3509, subdivision (b).¹⁷ (See also *City of Carson* (2003) PERB Decision No. Ad-327-M.) “[T]he power reserved to local agencies to adopt rules and regulations was intended to permit supplementary local 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.) The declared purpose of the statute at issue here, section 3508, is to protect the “right to a separate

¹⁶ We agree with Local 39 that the action taken by the Board of Supervisors subsequent to the November 9, 2010, meeting is not relevant to the issue raised by the unfair practice complaint, i.e., whether the board violated the local rules by its action at that meeting. We also recognize that Local 39 does not claim that any of the County's local rules are unreasonable.

¹⁷ Section 3509, subdivision (b), provides: “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.”

all peace officer organization,” which “would have little meaning if peace officers were placed in a bargaining unit which has as its ‘recognized employee organization’ (§ 3501, subd. (b)) an organization either predominantly composed of nonpeace officers or not exclusively concerned with peace officer interests.” (*San Bernardino, supra*, 7 Cal.App.4th at p. 614.)

Under the local rules, unit modification means “to add positions to or subtract positions from an established bargaining unit in order to clarify or reflect a more appropriate unit composition.” (EEORR, § 2, Definitions.) By the action taken by the Board of Supervisors on November 9, 2010, the board in effect caused two modifications. First, it subtracted positions from the Local 39-represented General Unit. Second, it added positions to the YCIA-represented Investigators Unit. At the time, both Local 39 and YCIA were established bargaining units. In determining whether the County violated its local rules, we examine each modification separately.

Regarding the first action, the subtraction of positions from the General Unit, we find that the Board of Supervisors did not violate the local rules. The YCPA petition squarely presented a legitimate modification request based on the peace officers’ right to a separate bargaining unit. The YCPA petition complied with local representation rules. Although not made explicit by the board by the manner in which it acted, the board *in substance* overturned the determination of Nunes to deny the YCPA’s request for modification. Under the local rules, the Board of Supervisors’ action to modify the General Unit by subtracting the peace officer classifications was final and binding.

Regarding the second action, the addition of positions to the Investigators Unit, we agree with Local 39 that the Board of Supervisors violated its local rules, and therefore the MMBA, by taking an action that had never been petitioned for by any employee organization, thereby depriving Local 39, YCPA, and YCIA of notice and opportunity to be heard and

depriving the Probation Department peace officer public employees of their fundamental right to be represented by an exclusive representative of their own choosing. As Local 39 points out, none of the representation rules set forth in the local rules were complied with respect to this action. A governing body must act on a properly filed petition, not on a petition it wished or imagined had been filed or hypothesized should have been filed; otherwise its local rules are rendered meaningless.

While the dispute between Local 39 and the County is over whether the County violated its local rules, the rights of the peace officers who are not represented in this proceeding cannot be ignored. Local 39 concedes the point to some extent in stating the following: “Theatrically [sic], some action was to be taken because peace officers, if they so desire, are entitled to be in a bargaining unit imposed [sic] only of peace officers.” (Local 39’s Statement of Exceptions and Supporting Brief, p. 6.) Local 39 then goes on to argue that this rationale, however, does not apply because “the Board of Supervisors not only moved peace officers out of the general unit, but non-peace officers as well thus undermining any logic of the move.” We disagree that this fact is dispositive. Just because the probation aides were initially included in the YCPA petition on the mistaken assumption that they had peace officer status does not mean that the effort to create a separate bargaining unit for the Probation Department classifications with bona fide peace officer status should otherwise be called into question. These public employees are entitled to a separate representation unit despite the fact that the County ran roughshod over its own rules to achieve that result.

Santa Clara, supra, 51 Cal.App.3d. 255 involved similar facts. The County of Santa Clara had created an all-county representation unit, which included the job classification of district attorney investigator. The district attorney investigators are peace officers. The all-county unit mainly represented employees who were not peace officers. An association whose

peace officer-only membership comprised all of the full-time investigators employed by the County of Santa Clara and the Santa Clara District Attorney petitioned the county for recognition as the representation unit for the district attorney investigators. The association's petition was denied. The County of Santa Clara disputed the association's contention that section 3508 grants full-time peace officers a separate representation unit. The court stated the following:

The express language of the 1965 amendment to section 3508 is to grant to peace officers as a separate group the right to organize to concern themselves "solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession"; thus, to pursue the purposes of the MMB Act.

(*Santa Clara, supra*, 51 Cal.App.3d at p. 262.)

The court concluded that the County of Santa Clara could not unreasonably withhold recognition of the association representing the district attorney investigators. "We hold that section 3508 grants to peace officers (as defined by Pen. Code, § 830.3, subd. (b)) the right to be placed in an employee representation unit exclusive of and separate from nonpeace officer employees." (*Santa Clara, supra*, 51 Cal.App.3d at p. 263.)¹⁸

Thus, while we find the County in violation of its local rules with respect to its action in adding the Probation Department peace officer classifications to the YCIA-represented Investigators Unit, we do not find the County in violation of its rules with respect to its action

¹⁸ At the same time, the court found that the association had not put forth any facts showing a lack of community of interest with the other peace officers in the County of Santa Clara, or any facts showing that the all peace officer unit was unable to effectively represent their interests. (*Santa Clara, supra*, 51 Cal.App.3d at p. 265.)

in subtracting those classifications from the General Unit.¹⁹ To do so would be to unnecessarily penalize the peace officers who, unlike the County, dutifully complied with the local rules. As a just and proper remedy,²⁰ it is appropriate to order the County to pay for any loss in wages or benefits incurred by employees in the Probation Department classifications who were merged into the YCIA-represented Investigators Unit as a result of the action taken by the Board of Supervisors on November 9, 2010. Because the County reversed that action by removing those Probation Department classifications from the YCIA-represented Investigators Unit at the Board of Supervisors' meeting on January 11, 2011, rescission of the action need not be ordered by the Board.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the County of Yolo (County) violated its local rules and thereby violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3506 and 3509, subdivision (b), and Public Employment Relations Board (PERB) Regulation 32603, subdivisions (a), (b) and (g) (Cal. Code Regs., tit. 8, sec. 31001 et seq.), by taking action to add the Yolo County Probation Association-represented Probation Department peace officer classifications to the Yolo County Investigators Association (YCIA)-represented Investigators Unit without a unit modification petition proposing such action having been filed by any

¹⁹ We also find that recognition of YCPA as the exclusive representative of the Probation Department peace officer classifications attached when the modification of the General Unit occurred.

²⁰ Section 3541.5, subdivision (c), incorporated within MMBA section 3509, subdivisions (a) and (b), authorizes PERB "to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter."

employee organization pursuant to the Employer-Employee Organization Relations Resolution (EEORR).

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

A. CEASE AND DESIST FROM:

1. Violating the County's EEORR rules and procedures for modifying a bargaining unit.

2. 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. Pay for any loss in wages or benefits incurred by employees in the Probation Department classifications who were merged into the YCIA-represented Investigators Unit as a result of the action taken by the Board of Supervisors on November 9, 2010.

2. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all locations where notices are customarily 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 the Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO.

Members Huguenin and Banks joined 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 No. SA-CE-704-M, *Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO v. County of Yolo*, in which all parties had the right to participate, it has been found that the County of Yolo (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3506 and 3509, subdivision (b), and Public Employment Relations Board Regulation 32603, subdivisions (a), (b) and (g) (Cal. Code Regs., tit. 8, sec. 31001 et seq.), by taking action to add the Yolo County Probation Association-represented Probation Department peace officer classifications to the Yolo County Investigators Association (YCIA)-represented Investigators Unit without a unit modification petition proposing such action having been filed by any employee organization pursuant to the Employer-Employee Organization Relations Resolution (EEORR).

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

A. CEASE AND DESIST FROM:

1. Violating the County's EEORR rules and procedures for modifying a bargaining unit.
2. 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:

Pay for any loss in wages or benefits incurred by employees in the Probation Department classifications who were merged into the YCIA-represented Investigators Unit as a result of the action taken by the Board of Supervisors on November 9, 2010.

Dated: _____

COUNTY OF YOLO

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.