STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MADERA AFFILIATED CITY EMPLOYEES ASSOCIATION, Charging Party, v. CITY OF MADERA, Respondent.	Case No. SA-CE-932-M PERB Decision No. 2506-M December 13, 2016
OPERATING ENGINEERS LOCAL UNION NO. 3, Joined Party.	

Appearances: City Employees Association by Jeffrey W. Natke, Attorney, for Madera Affiliated City Employees Association; Liebert Cassidy Whitmore by Shelline K. Bennett and Che I. Johnson, Attorneys, for City of Madera; Rose Law by Joseph Rose, Attorney, for Operating Engineers Local Union No. 3.

Before Winslow, Banks and Gregersen, Members.

DECISION

GREGERSEN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the Madera Affiliated City Employees Association (Association) to the proposed decision (attached) of a PERB administrative law judge (ALJ) dismissing the complaint and the Association's unfair practice charge against the City of Madera (City). The complaint alleged that the City violated the Meyers-Milias-Brown Act (MMBA)[1] and PERB Regulations[2] when it denied the Association's decertification petition as

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

untimely.

The Board has reviewed the Association's exceptions, the City's response, the proposed decision and the entire record in light of applicable law. Based on this review, we conclude that the ALJ's conclusions of law are well-reasoned and in accordance with applicable law. We affirm the proposed decision, subject to the following discussion of the Association's exceptions.

PROCEDURAL BACKGROUND

On December 4, 2015, the Association filed an unfair practice charge against the City. On January 19, 2016, the City filed a position statement in response to the charge.

On January 19, 2016, the City filed an application to join Operating Engineers Local Union No. 3 (OE3), exclusive representative for the general bargaining unit, as a party. On January 25, 2016, the Association stated its opposition to the application for joinder.

On January 22, 2016, the Office of the General Counsel issued a complaint alleging that the City unlawfully denied the Association's petition for decertification as untimely under its local rules.

On January 27, 2016, OE3 filed an application for joinder as a party to the case.

On February 12, 2016, the City filed an answer to the complaint.

On March 2, 2016, the parties met for an informal settlement conference, but the matter was not resolved.

On March 25, 2016, both applications for joinder were granted and a Notice of Hearing was issued. Thereafter, the parties agreed to submit the case by stipulated record.

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

On June 8, 2016, the parties filed closing briefs, and on June 28, 2016, the ALJ issued her proposed decision.

On July 25, 2016 the Association timely filed its exceptions, to which the City timely responded on August 22, 2016. OE3 did not file a response.

On August 23, 2016, PERB's Appeals Assistant informed the parties that the filings were complete and the matter was placed on the Board's docket.

FACTUAL SUMMARY

This case was submitted based upon the following stipulated facts:

> 1. At all times hereto, the City has been a public agency within the meaning of Government Code Section 3501, subdivision (c).
>
> 2. The City has an Employer Employee Relations (EER) [sic.] which governs representational issues such as certification and decertification of employee organizational groups. . . .
>
> 3. Operating Engineers Local Union No. 3 (OE3) and the City were signatories to a Memorandum of Understanding (MOU) which expired on June 30, 2015. . . .
>
> 4. On or about November 5, 2015, [the Association] filed a petition to decertify and replace OE3 as the exclusive representative in the unit. . . .

Attached to the stipulated facts were the following exhibits: (1) the City's local rules for Employer-Employee Organizational Relations; (2) the General Bargaining Unit (GBU) memorandum of understanding (MOU) between the City and OE3, effective September 4, 2013, to June 30, 2015; and (3) the employee signatures in support of the Association's decertification and recognition petition.

Although not included in the stipulated facts, the complaint provided the following

additional facts:[3]

> 4. On or about November 5, 2015, Charging Party filed a petition with Respondent to decertify OE3 and certify Charging Party as the exclusive representative of the GBU.
>
> 5. On or about November 13, 2015, Respondent denied Charging Party's petition on the basis the petition was not timely filed in the month of March pursuant to Section 2.5 of its local rules, which state:
>
> > 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 Office *only during the month of March of any year* following the first full year of recognition or during the thirty (30) calendar day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later.

(Emphasis in original.)

PROPOSED DECISION

The ALJ identified the issue before her as whether the City's local rule for filing decertification petitions was unreasonable. The ALJ interpreted the language of Section 2.5 to provide that a decertification petition must be filed during a specific timeframe, either during a 30-day window period commencing 120 days before a contract expires, or during the month of March, if no contract is in effect. After reviewing the stipulation of facts and relevant law, the ALJ concluded that both the City's contract bar and the City's rule limiting the filing of decertification petitions to a one-month period were consistent both with the MMBA and PERB Regulations, and therefore not unreasonable. Since the Association failed to file a

[3] In its answer to the complaint, the City admitted the factual allegations in paragraphs four and five.

decertification petition during the window period provided by the City's rules, the ALJ dismissed the complaint and the Association's charge.

DISCUSSION

When a local agency's rule or its application is challenged as unreasonable, the burden of proof is on the challenging party. (*Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331, 338; PERB Regulation 32178.) In representation matters, PERB finds no unfair labor practice where the agency reasonably interprets its own rules. (*City of Carson* (2003) PERB Order No. Ad-327-M.) When looking at an allegedly unreasonable rule, PERB does not inquire whether it would find a different rule more reasonable, but asks whether the disputed rule is consistent with and effectuates the purposes of the express provisions of the MMBA. (*International Brotherhood of Electrical Workers, Local 1245 v. City of Gridley* (1983) 34 Cal.3d 191; *City of San Rafael* (2004) PERB Decision No. 1698-M; *County of Monterey* (2004) PERB Decision No. 1663-M.)

Legislative action by a local government agency, like the adoption of local rules, is presumed to be reasonable in the absence of proof. (*United Clerical Employees, Local 2700 v. County of Contra Costa* (1977) 76 Cal.App.3d 119, 125.) Likewise, the party challenging the application of a local rule carries the burden of demonstrating that the decision was not reasonable. (*City of Glendale* (2007) PERB Order No. Ad-361-M.) A charging party alleging a violation based on the adoption or enforcement of an unreasonable rule must first show that the local rule or regulation abridges the exercise of employee or employee organization rights under the MMBA. (*County of Monterey, supra*, PERB Decision No. 1663-M.) A local rule that infringes on the rights of an employee organization under MMBA section 3503 or the

rights of employees under MMBA section 3506 would constitute an unreasonable local rule. (*Ibid*.)

On appeal, the Association first argues that the ALJ failed to properly frame the issue and address whether PERB's regulations should "fill in the gaps" in the City's local rules. Specifically, the Association argues that the City's failure to permit the filing of a decertification petition when an MOU expires is unreasonable and urges PERB to "fill this gap" by imposing such a rule.

MMBA section 3509 grants PERB the authority to "adopt rules to apply in areas where a public agency has no rule." PERB Regulation 61000 provides that PERB "will conduct representation proceedings . . . under MMBA in accordance with the applicable provisions of this Chapter only where a public agency has not adopted local rules in accordance with MMBA section 3507." PERB Regulations serve to "fill in the gap" when a local agency has not adopted a local rule on a particular issue. (*County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M; *County of Orange* (2010) PERB Decision No. 2138-M.)

The Association argues that PERB's regulations should "fill in the gap" because the actual language of Section 2.5 is ambiguous and susceptible to conflicting interpretations and therefore unreasonable. To illustrate its position, the Association focuses on the use of the permissive word "may" in Section 2.5 in providing two alternative interpretations of the existing language of Section 2.5. First, the Association argues that the language "may" include a contract bar, but that the permissive language of the rule allows for filing even when a contract is in place. Alternatively, the Association argues that even if a contract bar is included in the rule, the use of the word "may" does not prohibit the filing of a decertification petition immediately upon expiration of a contract.

PERB applies the rules of statutory construction when interpreting a public agency's local rules. (*Santa Clara County Correctional Peace Officers' Assn., Inc.. v. County of Santa Clara*) (2014) 224 Cal.App.4th 1016, 1027.) It is a maxim of statutory construction that if the language of a statute is clear and unambiguous, then the intent of the Legislature is reflected in the plain meaning of the statute. (*Barstow Unified School District* (1996) PERB Decision No. 1138; *North Orange County Regional Occupational Program* (1990) PERB Decision No. 857.)

We do not find the Association's first argument persuasive. Relying solely on the presence of the word "may" ignores the language of the section as a whole. Section 2.5 states:

> 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 March of any year following the first full year of recognition or during the thirty (30) calendar day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later.

When read in its entirety, Section 2.5 is not permissive. The term "may" is used to provide for the two time periods in which a decertification petition can be filed: either during the 30-day window period commencing 120 days before a contract expires, or during the month of March, if no contract is in effect. We agree with the findings of the ALJ. A reasonable interpretation of Section 2.5 is that the two provisions work together to create an annual window period in March when no contract is in effect, or for the periods of time in which a contract is in effect. Therefore, Section 2.5 appears reasonable on its face and it is incumbent on the Association to prove the unreasonableness.

To support its argument, the Association cites to the City's repeated "misrepresentations" of its local rules as demonstrated in numerous facts and documents initially attached to both the Association's opening brief and reply brief including correspondence exchanged between the parties. Because this matter was submitted by stipulated record, the ALJ refused to consider the additional documents, exhibits, and facts not included in the stipulation of facts or its attached exhibits.

To the extent the Association now asks the Board to consider such evidence, we decline to do so. PERB Regulation 32300(b) provides that "[r]eference shall be made in the statement of exceptions only to matters contained in the record of the case." The additional documents, exhibits and facts were not included in the stipulation of facts and are thus not part of the record before the Board on appeal. Although PERB has authority to order the record reopened for the taking of further evidence (Reg. 32320(a)(2)), the standard to be applied is the same as that governing requests for reconsideration. (*San Mateo Community College District* (1985) PERB Decision No. 543; see also, *California State University* (1990) PERB Decision No. 799a-H.) Thus, in offering the additional facts, documents and exhibits as part of its statement of exceptions, the Association should have followed the process set forth in PERB Regulation 32410(a), including a declaration under penalty of perjury that establishes grounds for consideration of the new evidence. Because no such declaration was filed with the exception, the Board will not consider this information in deciding this case. As such, the Association has failed to meet its burden.

Repeating arguments it made to the ALJ, the Association continues to argue that the rule is unreasonable because it does not permit the filing of a decertification petition at the time

a contract expires. It is the Association's burden to show how the local rule abridges the exercise of employee or employee organization rights under the MMBA.

The Association, however, provides no case law to support its assertion. Instead, it makes a policy argument that the imposition of a contract bar and/or window period which only opens for one month when no MOU is in place clearly runs counter to the principle of employee free choice which is central to the MMBA. According to the Association, the fact that employees must wait nine months without a contract in order to file a decertification petition "flies in the face of the law." The Association, however, makes such assertion without a single citation to the MMBA or any relevant caselaw. Moreover, the stipulation of facts in this matter provides no empirical evidence to support such a claim.

We are not persuaded by the Association's argument. The MMBA does not require that a decertification petition be allowed immediately upon expiration of a contract and the City's local rule does not provide for such a filing. Therefore, the City's local rule is not inconsistent with the MMBA and is not unreasonable. While the City has designated the month of March as the filing period for decertification petitions when no contract is in effect, the Association has provided no support to explain how the City's rule limiting the filing of decertification petitions to the one-month period is contrary to the MMBA. Therefore, Charging Party has failed to meet its burden of proof and establish that the City's rule is unreasonable.

ORDER

The unfair practice charge in Case No. SA-CE-932-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Winslow and Banks joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

MADERA AFFILIATED CITY EMPLOYEES ASSOCIATION, Charging Party, v. CITY OF MADERA, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-932-M PROPOSED DECISION (June 28, 2016)
OPERATING ENGINEERS LOCAL UNION NO. 3, Joined Party.	

Appearances: City Employees Associates by Rich Anderson, Labor Relations Representative, for Madera Affiliated City Employees Association; Liebert Cassidy Whitmore by Che I. Johnson, Attorney, for City of Madera; Rose Law by Joseph W. Rose, Attorney, for Operating Engineers Local Union No. 3.

Before Robin W. Wesley, Administrative Law Judge.

INTRODUCTION

In this case, an employee organization alleges that a public agency employer violated the Meyers-Milias-Brown Act (MMBA),[1] and regulations of the Public Employment Relations Board (PERB or Board),[2] when it denied its decertification petition as untimely. The employer denies any violation of the MMBA or PERB regulations.

[1] The MMBA is codified at Government Code section 3500 et seq. All statutory references are to the Government Code, unless otherwise stated.

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

PROCEDURAL HISTORY

On December 4, 2015, the Madera Affiliated City Employees Association (MACEA) filed an unfair practice charge against the City of Madera (City). On January 19, 2016, the City filed a position statement in response to the charge.

On January 19, 2016, the City filed an application to join Operating Engineers Local Union No. 3 (OE3), exclusive representative for the general bargaining unit, as a party. On January 25, MACEA stated its opposition to the application for joinder.

On January 22, 2016, the PERB Office of the General Counsel issued a complaint alleging that the City unlawfully denied MACEA's petition as untimely under its local rules. The City is alleged to have violated MMBA sections 3503, 3506, 3506.5, subdivisions (a) and (b), and 3507, and thereby committed unfair practices under MMBA section 3509, subdivision (b), and PERB Regulation 32603, subdivisions (a), (b), and (f).

On January 27, 2016, OE3 filed an application for joinder as a party to the case.

On February 12, 2016, the City filed an answer to the complaint, admitting the factual allegations, denying any violation of the MMBA or PERB Regulations, and asserting affirmative defenses.

The parties participated in a PERB settlement conference on March 2, 2016, but the matter was not resolved.

On March 25, 2016, both applications for joinder were granted. A notice of hearing issued, setting the hearing for May 11.

Subsequently, the parties agreed to submit the case by stipulated record. With the filing of briefs, the case was submitted for proposed decision on June 8, 2016.[3]

FINDINGS OF FACT

The City admitted in its answer, and the parties thereafter stipulated, that the City is a public agency within the meaning of MMBA section 3501, subdivision (c), and PERB Regulation 32016, subdivision (a). The City also admitted that MACEA is an employee organization within the meaning of MMBA section 3501, subdivision (a).

The parties' stipulation of facts states:

> 1. At all times hereto, the City has been a public agency within the meaning of Government Code Section 3501, subdivision (c).
>
> 2. The City has an Employer Employee Relations (EER) [sic.] which governs representational issues such as certification and decertification of employee organizational groups.
>
> 3. Operating Engineers Local Union No. 3 (OE3) and the City were signatories to a Memorandum of Understanding (MOU) which expired on June 30, 2015.
>
> 4. On or about November 5, 2015, MACEA filed a petition to decertify and replace OE3 as the exclusive representative in the unit.

Attached as exhibits to the stipulation of facts are the City's local rules for Employer-Employee Organizational Relations; the General Bargaining Unit (GBU) MOU between the City and OE3, effective September 4, 2013, to June 30, 2015; and the employee signatures in support of MACEA's decertification and recognition petition.

[3] MACEA and OE3 attached additional documents/exhibits to their briefs. MACEA's brief also referenced additional facts not included in the stipulation of facts. The additional documents, exhibits, and facts not in the stipulation of facts or its attached exhibits were not considered.

The complaint alleges, in part:

> 4. On or about November 5, 2015, Charging Party filed a petition with Respondent to decertify OE3 and certify Charging Party as the exclusive representative of the GBU.
>
> 5. On or about November 13, 2015, Respondent denied Charging Party's petition on the basis the petition was not timely filed in the month of March pursuant to Section 2.5 of its local rules, which state:
>
> > 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 Office *only during the month of March of any year* following the first full year of recognition or during the thirty (30) calendar day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later.
>
> [Emphasis in original.]

In its answer to the complaint, the City admitted the factual allegations in paragraphs four and five.

ISSUE

Is the City's local rule for filing decertification petitions unreasonable?

CONCLUSIONS OF LAW

MMBA section 3507, subdivision (a), authorizes local public agencies to adopt "reasonable rules and regulations" for the administration of employer-employee relations. Local public agency rules may include provisions for "Exclusive recognition of employee organizations." (MMBA § 3507, subd. (a)(4).) MMBA section 3507, subdivision (b), states:

> (b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees

> only after a period of not less than 12 months following the date of recognition.

A local public agency may not adopt rules and regulations "which would frustrate the declared policies and purposes of the [MMBA]. . . . the 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' Association v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 502; *International Brotherhood of Electrical Workers, Local Union 1245 v. City of Gridley* (1983) 34 Cal. 3d 191, 202.)

It is an unfair practice under MMBA section 3509, subdivision (b), and PERB regulation 32603, subdivision (f), for a local public agency to, "Adopt or enforce a local rule that is not in conformance with MMBA." PERB has the authority to determine whether a local rule is unreasonable. (*City of San Rafael* (2004) PERB Decision No. 1698-M; *City & County of San Francisco* (2007) PERB Decision No. 1890-M.) PERB's inquiry does not determine whether a different rule or a different application of the rule would be more reasonable, or whether the existing rule or its application is unreasonable measured against an arbitrary standard. Instead, the inquiry is whether a disputed rule or its application is consistent with and effectuates the purposes or express provisions of the MMBA. (*County of Amador* (2013) PERB Decision No. 2318-M; *County of Imperial* (2007) PERB Decision No. 1916-M; *City of San Rafael, supra,* PERB Decision No. 1698-M; *Huntington Beach Police Officers' Association v. City of Huntington Beach, supra,* 58 Cal.App.3d 492, 502; *International Brotherhood of Electrical Workers, Local Union 1245 v. City of Gridley, supra,* 34 Cal. 3d 191, 202.) In *Organization of Deputy Sheriffs of San Mateo County v. County of San Mateo,* (1975) 48 Cal.App.3d 331, 338-339, the court stated, "If reasonable minds may be divided as

to the wisdom of the [local agency's] action, its action is conclusive and courts should not substitute their judgment for that of the [local agency]."

When a local agency's rule or the application of its rule is challenged as unreasonable, the burden of proof is on the challenging party. (*Organization of Deputy Sheriffs of San Mateo County v. County of San Mateo, supra*, 48 Cal.App.3d 331, 338; *County of Amador, supra*, PERB Decision No. 2318-M; PERB Regulation 32178.) The adoption or enforcement of an unreasonable rule or regulation constitutes an unfair practice when it is established that the unreasonable rule abridges the exercise of employee or employee organization rights under the MMBA. (*County of Monterey* (2004) PERB Decision No. 1663-M, Proposed Decision, p. 28-29.)

Section 2.5 of the City's EER provides procedures for filing of a decertification petition, including the time for filing a petition. It states, in part:

> 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 Office only during the month of March of any year following the first full year of recognition or during the thirty (30) calendar day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later.

EER section 2.5 provides that a decertification petition must be filed during a specific timeframe, either during a 30 day window period commencing 120 days before an MOU expires, or annually during the month of March if no contract is in effect.[4] Under this rule, MACEA could have filed its decertification petition during the 30 day window period of

[4] The local rule also provides that no petition can be filed within 12 months of recognition of an exclusive representative. This is consistent with MMBA section 3507, subdivision (b).

March 2, 2015, through April 1, 2015, or the following March, if no contract was then in effect. MACEA filed its decertification petition on November 5, 2015.

MACEA contends this rule is unreasonable because it does not permit the filing of a decertification petition at the time a contract expires. MACEA notes that PERB guidelines permit decertification petitions to be filed anytime there is no contract in effect. MACEA asserts that because bargaining unit employees are "usually anxious" to improve their terms and conditions of employment, this rule places an undue burden on affected employees, and thus PERB guidelines should be applied.

The City contends that MACEA has failed to meet its burden to establish that the City's local rules violate the MMBA. The City argues that the MMBA does not require local public agencies to provide an unrestricted right to decertify once an MOU has expired. Furthermore, the City asserts that the rule is reasonable because it provides a period of labor stability while parties attempt to conclude negotiations, and ensures employees retain free choice of representative within a specified and reasonable period. OE3 concurs that MACEA has failed to establish that the City's rule is contrary to the MMBA, or imposes an undue burden.

MMBA section 3509 grants PERB the authority to "adopt rules to apply in areas where a public agency has no rule." PERB Regulation 61000 provides that PERB "will conduct representation proceedings . . . under MMBA in accordance with the applicable provisions of this Chapter only where a public agency has not adopted local rules in accordance with MMBA section 3507." In *County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M, p. 17, the Board held that "PERB regulations serve to 'fill the gap' when a local agency has not adopted a local rule on a particular representation issue." (see also *County of Orange* (2010) PERB Decision No. 2138-M, p. 8.)

MACEA argues that PERB guidelines are more reasonable, and the City should be required to apply PERB rules to allow the filing of a decertification petition once a contract expires. PERB is not authorized, however, to apply its own procedures where, as here, the City has a local rule on decertification, unless the local rule is unreasonable under the MMBA.

The City's rule includes two time periods for filing decertification petitions. One, a contract bar, allows petitions to be filed only during the 30 day period commencing 120 days before expiration of the MOU. The Board has upheld the objectives of the contract bar doctrine, finding that its purpose is: "(1) to simplify rules in order to avoid litigation and quickly resolve disputes in representation proceedings; and (2) to balance the statutory policies of stability in labor relations with employees' freedom to choose their bargaining representatives" (*City of Carson* (2003) PERB Order No. Ad-327-M, p. 8; *County of Sacramento* (2004) PERB Decision No. 1581-M, Proposed Decision, p. 13.)

The City's contract bar is consistent with PERB regulations. PERB Regulation 61010 describes a "window period" as the time, "which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding." While local public agencies may establish a contract bar, the MMBA does not provide for a contract bar, and local agencies may, but are not required to, apply a contract bar. (*Service Employees International Union v. City of Santa Barbara* (1981) 125 Cal.App.3d 459; *City of San Rafael, supra*, PERB Decision No. 1698-M.) The City's local rules include a contract bar, and MACEA has not established that the contract bar is unreasonable.

Under the other filing period, a decertification petition may be filed in March of each year when no contract is in effect. In *City of San Rafael, supra*, PERB Decision No. 1698-M, a city's local rule allowed representation petitions, including unit modification and

decertification petitions, to be filed each year only during the months of October and November, and did not contain a contract bar. PERB rejected the union's assertion that the rule was unreasonable because it did not contain a contract bar, finding that the rule did not conflict with the MMBA.

In *County of Orange*, *supra*, PERB Decision No. 2138-M, in a challenge to a local severance procedure, the Board compared PERB's requirement for thirty percent proof of support, to the county's requirement for fifty percent proof of support. The Board found that although the county required more employee proof of support than PERB' rules, the local rule was not contrary to the MMBA, and thus not unreasonable.

While PERB guidelines allow decertification petitions to be filed when a contract expires, the City's local rule has designated the month of March as the filing period when no contract is in effect. Although the PERB filing period could potentially be longer, the Board will not find a different rule unreasonable unless it conflicts with the MMBA. The MMBA does not contain any provision allowing for decertification petitions to be filed upon expiration of a contract. In *City of San Rafael*, *supra*, PERB Decision No. 1698-M, the Board declined to find a local rule unreasonable that did not have a contract bar, and provided only a two-month window period. In *County of Orange*, *supra*, PERB Decision No. 2138-M, the Board found the proof of support requirement, which was different than PERB's requirement, was not contrary to the MMBA.

Here, the City's rule limiting the filing of decertification petitions to a one month period, is not contrary to the MMBA, and PERB will not find a local rule unreasonable simply because it believes its rule is more reasonable. MACEA has not established that the City's rule

is unreasonable. PERB will not, therefore, substitute its rule for the City's local rule. Accordingly, the case is dismissed.

PROPOSED ORDER

Based on the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. SA-CE-932-M, *Madera Affiliated City Employees Association v. City of Madera*, are hereby DISMISSED.

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
E-FILE: PERBe-file.Appeals@perb.ca.gov

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 or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 32135, subdivision (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, 32091, 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. (Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)