



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

LOS RIOS COMMUNITY COLLEGE DISTRICT,

Employer,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 1021,

Exclusive Representative.

Case No. SA-UM-848-E

PERB Order No. Ad-442

October 26, 2016

Appearances: Weinberg, Roger & Rosenfeld by Matthew Gauger, Attorney, for Service Employees International Union, Local 1021; Littler Mendelson by Bruce J. Sarchet, Attorney, for Los Rios Community College District.

Before Winslow, Banks and Gregersen, Members.

DECISION

GREGERSEN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Service Employees International Union, Local 1021 (SEIU) from the Office of the General Counsel's dismissal (attached) of its unit modification petition. The petition sought to divide the existing Maintenance/Operations and Campus Police Officers Unit (Support Services Unit), which SEIU currently represents, and create a separate police officer unit at the Los Rios Community College District (District).

The Board has reviewed the entire record in this matter, including the unit modification petition filed by SEIU, the District's response to the petition, the Office of the General Counsel's dismissal, SEIU's appeal, and the District's response to the appeal. We find the dismissal to be well reasoned and in accordance with applicable law, and therefore adopt it as the decision of the Board itself subject to a brief discussion of SEIU's appeal below.

BACKGROUND

SEIU is the exclusive representative for the current Support Services Unit at the District. The established unit was certified as an appropriate unit by PERB's predecessor, the Educational Employment Relations Board (EERB),¹ on June 17, 1977.

On March 10, 2016, SEIU filed a unit modification petition pursuant to PERB Regulation 32781(a)(2)² seeking to carve out a separate police officer unit from the established Support Services Unit. Prior to filing the unit modification petition, SEIU contacted the District to request that the District voluntarily modify the unit, but the District denied SEIU's request.

On March 25, 2016, the District filed a response to the petition disputing the appropriateness of the proposed unit.

On April 22, 2016, the Office of the General Counsel sent a letter to SEIU requesting further information to support its petition for a separate police officer unit including any information demonstrating that the public safety officers share a community of interest separate and distinct from other employees in the Support Services Unit. The letter also requested that SEIU identify the specific police officer titles/classifications/positions sought to be included in the proposed unit.

On August 1, 2016, SEIU responded simply by stating that its position remained the same as stated in its original unit modification petition.

¹ Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

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

On August 5, 2016, the Office of the General Counsel dismissed the petition, finding that SEIU failed to meet its burden in providing sufficient facts for PERB to determine the appropriateness of the proposed unit. SEIU filed a timely appeal to which the District filed a timely opposition.

DISCUSSION

In *Sweetwater Union High School District* (1976) EERB Decision No. 4 (*Sweetwater*), the Board established three presumptively appropriate bargaining units for classified employees of school districts including: (1) an operations-support services unit, (2) an instructional aides (paraprofessional) unit; and (3) an office-technical and business services unit. There is no dispute that the current Support Services Unit is an operations-support unit and is therefore a presumptively appropriate bargaining unit under *Sweetwater*. (*Ibid.*; *Foothill-DeAnza Community College District* (1977) EERB Decision No. 10.)

When a petition is filed to carve out a smaller unit from a presumptively appropriate *Sweetwater* unit, the burden is on the petitioner to show that the requested unit is more appropriate. (*Temple City Unified School District* (1995) PERB Decision No. 1110; *San Juan Unified School District* (1995) PERB Decision No. 1082.) To determine whether the burden has been met requires weighing the community of interest among employees, the efficiency of employer operations and established practices. (*Ibid.*)

The Office of the General Counsel dismissed the unit modification petition finding that SEIU had, despite being requested to, failed to provide sufficient facts for PERB to make a unit determination regarding the appropriateness of the proposed unit. SEIU failed to identify the specific police officer titles/classifications/positions it sought to include in the proposed police officer unit. SEIU also failed to describe the specific duties of the disputed positions, or

provide any information that would demonstrate that the police officers shared a community of interest separate and distinct from other employees in the Support Services Unit. As such, SEIU provided insufficient evidence to meet its burden of showing that its proposed unit is more appropriate than the current unit.

On appeal, SEIU provides no explanation for its failure to provide information. Instead, it cites only to *Sacramento City Unified School District (1977) EERB Decision No. 30 (Sacramento City USD)*, arguing that PERB has previously accepted non-*Sweetwater* bargaining units.

In *Sacramento City USD, supra*, EERB Decision No. 30, without objection from the employer, PERB found a separate security unit to be appropriate based on policy considerations that the employer was entitled to a nucleus of “protection employees” to enforce its rules and protect its property. The Board did so only after having examined the duties performed by the security officers. In its appeal, however, SEIU does not request that PERB conduct an examination of the duties performed by the disputed positions, nor does it provide any evidence to examine. Instead, SEIU requests only that the Board expand its decision in *Sacramento City USD* and allow police officers to be *automatically* carved out of an existing mixed unit when the request is made by an incumbent union. SEIU suggests that the Board undertake such action as a policy determination and overturn the Office of the General Counsels’ decision “in the interest of free choice and democracy.”

In support of its argument, SEIU states that with a unit modification petition filed by an incumbent union, any concern over proliferation of units should be much lower and that an incumbent union is more likely to “be acting in response to the needs of its own members.” In addition, SEIU contends that granting the unit modification requested by an incumbent union is

more likely to have no negative impact on the stability of labor relations or the ability to negotiate future contracts and other *Sweetwater* interests. SEIU, however, provides no empirical evidence to support such claims.

We are not persuaded by SEIU's argument. Carving out police officers from the existing unit and forming a new unit would increase the total number of units in the District from four to five. This is the definition of proliferation, and we find nothing in SEIU's argument to support the proposition that this should be a lesser concern simply because it is the incumbent union seeking to establish the unit, as opposed to a rival union. It is equally unclear how granting the unit modification would be less likely to have a negative impact on the stability of labor relations.

We decline to follow SEIU's suggestion to take this opportunity to make a policy determination that a unit modification can be granted based on the sole fact that an incumbent union has filed the petition. Therefore, because the existing unit was a presumptively appropriate unit under *Sweetwater* and because SEIU alleged no facts establishing that its proposed unit is more appropriate than the current unit, the Office of the General Counsel properly dismissed the unit modification petition.

ORDER

The unit modification petition in Case No. SA-UM-848-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Winslow and Banks joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 322-3198
Fax: (916) 327-6377



August 5, 2016

Matthew Gauger, Attorney
Weinberg, Roger & Rosenfeld
428 J Street, Suite 520
Sacramento, CA 95814-2341

Re: Los Rios Community College District
Case No. SA-UM-848-E
DISMISSAL LETTER

Dear Mr. Gauger:

As you know, a unit modification petition (petition) pursuant to PERB Regulation 32781(a)(2)¹ was filed with the Public Employment Relations Board (PERB or Board) on March 10, 2016, by Service Employees International Union, Local 1021 (SEIU). The petition seeks to divide the existing Maintenance/Operations and Campus Police Officers Unit (Unit) that SEIU currently represents, and create a separate police officer unit.

The Los Rios Community College District (District) filed a response to the petition dated March 24, 2016, where it disputes the appropriateness of the proposed unit on several grounds. The District asserts first that the petition should be dismissed because the established Unit is presumptively appropriate under *Sweetwater Union High School District (1977) EERB Case No. 37 (Sweetwater)*,² and the petition does not allege a change in circumstances. The District notes that the description of the established Unit is described under the parties' collective bargaining agreement and that the Unit was certified by PERB's predecessor, the EERB, on June 17, 1977.

The District next asserts that granting the petition will lead to proliferation of bargaining units, where there are currently four units. The District further asserts that there exists a long and stable bargaining relationship. SEIU was recognized as the exclusive representative of the unit including police officers in 1977, nearly 40 years ago. For this reason, argues the District, there also can be no showing of dissatisfaction by police officers with the current representative.

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq., and may be found at www.perb.ca.gov.

² Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

In a letter dated April 22, 2016 (April 22 Letter), the undersigned Board agent noted that the established Unit appears to be a presumptively appropriate *Sweetwater* unit. (*Sweetwater, supra*, EERB Decision No. 4; *Foothill-DeAnza Community College District (1977)* EERB Decision No. 10.) As a strong community of interest normally exists among the presumptively appropriate *Sweetwater* classified units, when a petition is filed to divide out a smaller unit from a presumptively appropriate *Sweetwater* unit, the burden is on the petitioner to show that the requested unit is more appropriate. (*Temple City Unified School District (1995)* PERB Decision No. 1110; *San Juan Unified School District (1995)* PERB Decision No. 1082.)

In the April 22 Letter, SEIU was requested to provide further information that would support the petition, including information that would demonstrate that the police officers share a community of interest separate and distinct from other employees within the established Unit. SEIU was also requested to identify the specific public safety officers classifications sought to be included in the proposed unit. The letter further advised that any response and information provided should be supported by declarations under penalty of perjury by witnesses with personal knowledge.

In its response dated August 1, 2016,³ SEIU asserts that its position regarding the petition is the same as its February 10, 2016 request to the District's Vice Chancellor of Human Resources, which was attached to the petition, for the creation of a separate police officer unit. While acknowledging the District's position that the existing Unit is appropriate under *Sweetwater*, SEIU asserts that PERB has recognized non-*Sweetwater* units and that the division of the established Unit to create a separate police officer unit is permissible under *Sacramento Unified School District (1977)* EERB Decision No. 30 (*Sacramento USD*). SEIU notes that in *Sacramento USD*, though the employees in the unit were originally called deputized security officers, these employees eventually became peace officers under Penal Code section 830.32. SEIU represented that unit for approximately 25 years.

The Board in *Sacramento USD* considered multiple requests for initial recognition and determined appropriate bargaining units for the classified employees of the District, including school security officers. In *Sacramento USD*, the Board held that a separate security officer unit was appropriate based on policy considerations—supported by NLRB decisions—that the employer in that case was entitled to a nucleus of “protection employees” to enforce its rules and protect its property. (*Sacramento USD, supra*, EERB Decision No. 30, p. 6.) However, the Board also examined the duties performed by the security officers in finding that a separate unit was appropriate. In the instant case, there are no facts to describe the specific duties of the disputed positions. Additionally, unlike the present case, the employer in *Sacramento USD* did not oppose a separate peace officer unit. (*Id.* at p. 5.)

³ The April 22 Letter requested that SEIU provide the information in support of the petition by May 6, 2016. In following up with SEIU regarding the status of its response, the undersigned Board agent was advised on June 6, 2016, that counsel for SEIU was on vacation and would be returning on approximately June 27, 2016.

Given that there is no presumption that a separate peace officer unit is appropriate, the petitioner has the burden to show that the requested unit is more appropriate than the presumptive *Sweetwater* unit. (*Temple City Unified School District, supra*, PERB Decision No. 1110; *San Juan Unified School District, supra*, PERB Decision No. 1082.) This burden has not been satisfied and having investigated the petition pursuant to PERB Regulation 32786, there are insufficient facts for PERB to make a unit determination regarding the appropriateness of the proposed unit. Accordingly, the petition is denied, and this case is hereby dismissed, without prejudice.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision. (Cal. Code Regs., tit. 8, § 32360.) To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; 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.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (Cal. Code Regs., tit. 8, § 32360, subd. (c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justifications for the request (Cal. Code Regs., tit. 8, § 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (Cal. Code Regs., tit. 8, § 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Sacramento Regional Office regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see

Cal. Code Regs., tit. 8, § 32140 for the required contents). The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Sincerely,

Ronald Pearson
Senior Regional Attorney

RP

cc: Ryan Cox, Associate Vice Chancellor, Human Resources