



HUMAN RESOURCES DEPARTMENT

MONA MIYASATO
Acting Director

Date: March 3, 2010
To: Chairperson and Personnel Commissioners
From: Mona Miyasato, Acting Human Resources Director
Re: Petitions for Decertification, Certification and Bargaining Unit Modification

Introduction

The County has received recognition petitions requesting decertification of incumbent recognized bargaining representatives, certification of other bargaining representatives and a bargaining unit modification, which proposes establishment of a new bargaining unit. This report clarifies the actions being requested of the Personnel Commission in accordance with the County's Personnel Management Regulations (PMRs) and presents findings on each petition for the Commission's deliberation at the public hearing. The findings for each petition are attached to this report.

Summary

Petitions have been submitted by three organizations regarding the following bargaining units:

The Marin Association of Public Employees (MAPE) has submitted petitions requesting decertification of Service Employees' International Union (SEIU), Local 1021, and certification of MAPE as the exclusive bargaining representative of the following bargaining units:

- Bargaining unit 01 (General Clerical and Related Clerical Technicians)
- Bargaining unit 02 (Trades Vocational, Custodial)
- Bargaining unit 03 (Public Services and Related)
- Bargaining unit 04 (Technical Services, Regulatory and Related)
- Bargaining unit 16 (Public Defender Attorneys)
- Bargaining unit 10 (Health and Human Service Workers)
- Bargaining unit 13 (Nurses)

Bargaining units 01, 02, 03, 04, and 16 are parties to the SEIU Local 1021 General Unit Collective Bargaining Agreement, which expires July 1, 2010. Bargaining units 10 and 13 have individual collective bargaining agreements which also expire July 1, 2010.

The Marin County Probation Association has submitted petitions requesting decertification of Teamsters Local 856 and certification of the newly formed Association as the exclusive representative of Bargaining Unit 11 (Probation Workers).

The Deputy Sheriff's Association (DSA) has submitted petitions requesting a bargaining unit modification to establish a new unit of non-sworn law enforcement employees consisting of classifications in Bargaining units 01, 03 and 04; decertification of SEIU Local 1021 as the exclusive bargaining representative of these classifications; and certifying the DSA as the exclusive bargaining representative of the new bargaining unit.

Findings on each petition with specific facts are attached.

Background

The County's Employee Relations Resolution (PMR 4) specifies procedures for filing and processing certification, modification and decertification petitions (PMR 4.4 through 4.7). This Resolution was approved by the County in 2005 under the authority of Government Code 3507. Where the PMRs are ambiguous, conflict with current labor law, or lack specificity, the Meyers-Milias-Brown Act (MMBA) and the Public Employment Relations Board (PERB) Regulations provide "gap filling." (See, e.g., *International Brotherhood of Electrical Workers, Local 1245 v. City of Gridley* (1983) 34 Cal.3d 191). The Human Resources staff has worked closely with County Counsel and consulted with State Mediation and Conciliation Services (SMCS) and PERB on these areas.

Two distinct processes must be followed where an organization seeks to remove existing representation and replace it with another organization.

- **Decertification:** Requirements for decertification, or the process of removing the incumbent recognized bargaining representative, are specified in PMR 4.7, which requires that a petition must be filed "during a window period of no more than 180 days or less than 150 days prior to the expiration date of a collective bargaining agreement between a certified organization and the County, whichever is later." It also describes who may file a petition. Another (non-recognized) organization may file if the petition is accompanied by signatures of at least 30% of all employees in the proposed unit as proof of employee support. For this purpose, employees in the proposed unit were defined as all permanent and extra-hire employees in the County's payroll system as of January 23, 2010 (the end date of the last pay period prior to the closure of the window period), regardless of the actual hours worked.
- **Certification:** Requirements for certification, or the process of selecting another exclusive bargaining representative, include a statement of representation, as set forth in PMR Sections 4.4 through 4.6. PMR Section 4.4 identifies the required elements in the statement. PMR Section 4.4 (10) requires a statement that the employee organization has in its possession proof of employee support to establish that a *majority* of employees have designated the employee organization to represent them in their employment relations with the County. While this Subsection states that the proof of employee support should include a majority of employees in

the bargaining unit claimed to be appropriate, Government Code 3507.1 (c) sets the minimum requirement for such proof of employee support at 30%. Provided this conflict between the County Regulation and the Government Code, the County must conform to the requirement of the Government Code. The written proof must be submitted for validation to the Human Resources Director or a mutually agreed upon disinterested third party.

Unit Modification: In addition to these processes, unit modification requirements are specified in PMR 4.7 (same section as decertification), which require that a petition for modification be filed within the window period of 150 to 180 days prior to contract expiration and the same requirement that the petition include signatures of 30% of all employees in the proposed unit. The standard for evaluating appropriateness of a bargaining unit composition includes an examination of community of interest criteria shared among employees in an existing or proposed bargaining unit. PMR 4.2 defines a bargaining unit as "the largest feasible grouping of County employees, which has a community of interest."

Investigation and Findings

PMR Section 4.5(B) requires the Human Resources Director investigate the statements, confer with affected department heads and organizations and prepare findings as to the feasibility of the proposed unit and authentication of the representative status of the organization.

As part of that investigation and verification, the County requested that the California State Mediation and Conciliation Services, as a disinterested third party, verify whether or not the decertification signatures submitted by MAPE, Marin County Probation Association and DSA satisfied the 30% requirement. Sandra Poole, a mediator from State Mediation and Conciliation Services, reviewed the petitions and her conclusions, where final, are included in the findings and attached. She also reviewed petitions requesting certification. Consistent with PERB guidance, the mediator did not consider rescission cards submitted by the incumbent or the petitioning organization. A sample of the rescission cards submitted is attached. The Human Resources Director and/or designee met with affected department heads, representatives of SEIU, Teamsters, MAPE, DSA and the Marin County Probation Officers' Association in preparing these findings.

Calling for An Election

On the question of representation, the PMRs, current law and PERB Regulations advise that an election be called if there is a valid question (defined by 30% proof of employee support) of representation raised by the decertification and certification petitions. In an election, majority wishes are determined by 51% of those who vote in the election.

Should an election be called, the County has requested that State Mediation and Conciliation Services run the election. SMCS has said it would only provide this service if both the petitioning and incumbent organizations consent to an election and enter into a Mediated Election Agreement; if not, SMCS would not provide this service.

If there is no Mediated Election Agreement by the parties, the Commission may be requested to determine the type of election (mail ballot or in-person ballot), terms and conditions (such as who pays for the costs, time and place) or direct another third party mediator to assist in that determination.

On the question of the bargaining unit modification, the Commission may establish the new unit as proposed or with modifications. The representation of the new unit may be decided by election if a majority has not been established. For modifications to *existing* bargaining units, the County has the right to add classifications to existing bargaining units based on a community of interest without an election.

Personnel Commission Actions

PMR 4.5(C) specifies that that the Personnel Commission at its next scheduled meeting will hold a public hearing at which the claiming organization, other organizations and County management may present arguments and may submit written briefs.

PMR Section 4.5 (D) defines actions the Commission may take:

- 1) "Require holding a secret ballot election within the proposed or finally established unit to determine majority wishes or resolve conflicting representation claims. If the County establishes that a majority of employees in an appropriate bargaining unit desire the representation, pursuant to Government Code Section 3507.1, majority recognition will be granted.
- 2) Establish the unit as proposed or with modifications.
- 3) Establish one or more units which vary from the proposed unit, either to resolve conflicting claims or to better reflect community of interest, or for reasons of administrative feasibility,
- 4) Dismiss the request on grounds of insufficient showing of representation, inconsistency with policy established in Section 4.2, above, or for any reason inconsistent with the objectives set forth herein."

The Commission is required to render its decision within 5 days of the close of the public hearing, or of such period as may be provided for the filing of the briefs. The PMRs define the term "day" as a calendar day. (See PMR 2.1 M.) In the event of a dismissal or a modification of the proposed unit, any party thereto may file an appeal with the Board of Supervisors within 10 days. The Board will consider the matter on the record, and its decision will be final.

Findings

The full findings for each of the petitions are attached. A summary of key findings is provided below:

1. **Deputy Sheriff's Association (DSA) petitions to sever certain classifications from Bargaining Units 01, 03, 04 and establish a new unit, to decertify SEIU**

Local 1021 as the exclusive representative of these classifications and to recognize itself as the exclusive representative of the new bargaining unit.

This petition for unit modification is generally not appropriate, as the included classifications do not share a community of interest. Therefore a new bargaining unit is not warranted. The Coroner Investigator classifications, however, should be removed from Bargaining Unit 03 (Public Services and Related Unit) and placed in Bargaining Unit 08, with which they share a community of interest.

- 2. The Marin County Probation Association's petitions to decertify Teamsters Local 856 as the exclusive representative of Bargaining Unit 11 employees (Probation Workers) and certify itself as the exclusive representative of employees in Bargaining Unit 11.**

A valid question of representation exists based on the decertification petition, but a question of representation based on the certification petition has not yet been determined and is pending final verification of the certification petition by State Mediation and Conciliation Services.

It is recommended that a final decision on the question of representation raised by the decertification and certification petitions be deferred until after State Mediation and Conciliation Services has reviewed and determined the validity of the certification petition.

The parties have agreed to meet on March 11, pending your decision, to discuss a mediated election procedure.

- 3. The Marin Association of Public Employees (MAPE) petition to decertify Service Employees' International Union (SEIU), Local 1021, as the exclusive representative of Bargaining Unit 01 employees (General Clerical and Related Clerical Technicians) and certify itself as the exclusive representative.**

A valid question of representation exists based on the decertification and certification petitions.

The parties have not agreed at this point to discuss a mediated election procedure.

- 4. The Marin Association of Public Employees (MAPE) petition to decertify Service Employees' International Union (SEIU), Local 1021 as the exclusive representative of Bargaining Unit 02 employees (Trades Vocational, Custodial) and certify itself as the exclusive representative.**

Findings are the same as #3 above.

- 5. The Marin Association of Public Employees (MAPE) petition to decertify Service Employees' International Union (SEIU), Local 1021, as the**

exclusive representative of Bargaining Unit 03 employees (Public Services and Related Unit) and certify itself as the exclusive representative.

Findings are the same as #3 above.

- 6. The Marin Association of Public Employees (MAPE) petition to decertify Service Employees' International Union (SEIU), Local 1021, as the exclusive representative of Bargaining Unit 04 employees (Technical Services, Regulatory and Related) and certify itself as the exclusive representative.**

Findings are the same as #3 above.

- 7. The Marin Association of Public Employees (MAPE) petition to decertify Service Employees' International Union (SEIU), Local 1021, as the exclusive representative of Bargaining Unit 10 employees (Health and Human Service Workers) and certify itself as the exclusive representative.**

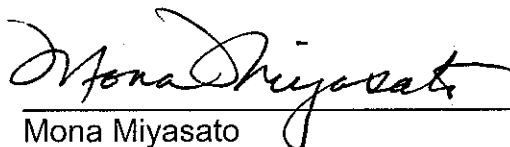
Findings are the same as #3 above.

- 8. The Marin Association of Public Employees (MAPE) petition to decertify Service Employees' International Union (SEIU), Local 1021, as the exclusive representative of Bargaining Unit 12 employees (Nurses) and certify itself as the exclusive representative.**

Findings are the same as #3 above.

- 9. The Marin Association of Public Employees (MAPE) petition to decertify Service Employees' International Union (SEIU), Local 1021, as the exclusive representative of Bargaining Unit 16 employees (Public Defender Attorneys) and certify itself as the exclusive representative.**

Findings are the same as #3 above.



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Acting Human Resources Director

Attachments:

Exhibits 1 -11

- Findings
- Petitions
- State Mediation and Conciliation Services Petition Verifications

- Briefs from organizations
Exhibit 12 – Sample of rescission cards

Cc: Edward Kreisberg, Meyers Nave
Jennifer Vuillermet, County Counsel
Angela Nicholson, Human Resources
Esteban Codos, Human Resources
Vincent Harrington, Weinberg Roger & Rosenfeld-SEIU
Cleveland Prince, Teamsters Local 856
Phillip Thomas, MAPE
Maya Gladstern, MAPE
Susana Tabunut, MCPA
Hugh Baker, DSA