

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



CITY OF INGLEWOOD,

Employer,

and

INGLEWOOD POLICE CIVILIANS
ASSOCIATION,

Petitioner,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 721,

Exclusive Representative.

Case No. LA-SV-166-M

Administrative Appeal

PERB Order No. Ad-390-M

September 28, 2011

Appearances: Bergman & Dacey by Mitchell C. Frederick, Attorney, for City of Inglewood; City Employees Associates by Jeffrey W. Natke, Labor Relations Representative, for Inglewood Police Civilians Association; Weinberg, Roger & Rosenfeld by Jacob J. White, Attorney, for Service Employees International Union, Local 721.

Before Martinez, Chair; McKeag and Huguenin, Members.

DECISION

MARTINEZ, Chair: This case comes before the Public Employment Relations Board (Board) on appeal of a Board agent's administrative determination (attached) on a severance petition filed by the Inglewood Police Civilians Association (IPCA) with the Board. The petition seeks to sever thirteen classifications from the City of Inglewood's (City) General Employees Bargaining Unit, which is exclusively represented by Service Employees International Union, Local 721 (SEIU). The Board agent dismissed the petition for lack of Board jurisdiction because severance can be achieved under the City's Resolution No. 7117 governing employer-employee relations.

We have reviewed the administrative determination, IPCA's appeal, SEIU's opposition, and the entire record in light of the relevant law.¹ Based on this review, we find the Board agent's order to show cause and dismissal of petition to be well reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, the Board affirms the dismissal of IPCA's petition, and adopts the Board agent's order to show cause and dismissal of petition as the decision of the Board itself.

ORDER

The severance petition in Case No. LA-SV-166-M is hereby DISMISSED.

Members McKeag and Huguenin joined in this Decision.

¹ Given the outcome reached by the Board in this case, the issue of whether there is good cause to excuse the City's untimely response to the appeal need not be addressed.

PUBLIC EMPLOYMENT RELATIONS BOARD

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April 28, 2011

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Re: City of Inglewood
Case No. LA-SV-166-M
DISMISSAL OF PETITION

Dear Interested Parties:

The above-referenced petition was filed with the Public Employment Relations Board (PERB or Board) on October 25, 2010. The Inglewood Police Civilian Association (Association) seeks to sever from the City of Inglewood's (City's) existing General Bargaining Unit a unit consisting of Custody Officers, Payroll Technicians, Property Officers, Police Training Assistants, Administrative Aides, Subpoena Clerks, Senior Forensic Specialists, Forensic Specialists, and Senior Administrative Aides.

On March 15, 2011, PERB issued an Order to Show Cause (OSC) requiring the Association to show why the Association's severance petition should not be dismissed for lack of jurisdiction. A copy of the OSC is included as an attachment to this letter. PERB afforded the Association until April 1, 2011 to file a response to the OSC. After receiving an extension of time, the Association filed its response on April 15, 2011.

In the OSC, PERB explained that it only has authority to conduct representation proceedings for parties subject to the Meyers-Milias-Brown Act (MMBA or Act) in such cases where a public agency has not adopted local rules under which severance can be achieved. (PERB Regulation

61000.¹) In *County of Orange* (2010) PERB Decision No. 2138, the Board held that PERB has the authority to assert jurisdiction and apply its own representation rules only when the agency's local rules contain no provision that can accomplish what the petitioner is seeking without placing an undue burden on the petitioner. PERB also explained that, in this case, the City asserted that severance has been achieved by employee organizations using the City's process to become the recognized employee organization of appropriate bargaining units, under City Employee Employer Relation (EER) 7117, Article II, section 4.

The Association does not challenge the accuracy of any of the facts relied upon in the OSC, including the finding that severance has previously been achieved under City EER, 7117, Article II, section 4. The Association contends that PERB, nonetheless, has authority over the instant petition under the Board's holding in *County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M (*Siskiyou*). In that case, the issue was whether PERB had the authority to address a petition for amendment of certification. The county employer argued that PERB lacked jurisdiction over that petition because amendment of certification could be achieved under the county's decertification process. The Board rejected this argument because it found amendment of certification and decertification to be fundamentally different processes. (*Ibid.*) More specifically, the Board found that:

a decertification petition seeks to oust the current recognized employee organization and replace it with either a different employee organization or no representation. (*Jamestown Elementary School District* (1989) PERB Order No. Ad-187; *International Union of Operating Engineers, State of California Locals 3, 12, 39 and 501, AFL-CIO (California State Employees' Association, SEIU, AFL-CIO)* (1984) PERB Decision No. 390-S.) Amendment of certification, on the other hand, "is appropriate where there is no change in the basic identity of the representative chosen by the employees but, rather, where the change is one of form and not of substance." (*Ventura Community College District* (1982) PERB Order No. Ad-130.)

The Board in that case held that it would be an undue burden to require a union to participate in the relatively onerous decertification process simply to obtain official recognition of a change in the organization's form. Accordingly, the Board applied its amendment of certification rules to the union's petition. (*Ibid.*)

The present situation is factually dissimilar from *Siskiyou, supra*, PERB Decision No. 2113-M. In this case, the issue is whether what PERB defines as severance can be achieved under the City's local rules for establishing a recognized employee organization of an appropriate

¹ The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8 section 31001 et seq. The text the MMBA and PERB Regulations may be found at www.perb.ca.gov.

bargaining unit. Unlike in *Siskiyou, supra*, PERB Decision No. 2113-M, the severance process is very similar in purpose to the recognition process.² According to PERB Regulations, both the severance and the petition for certification processes are designed to allow an employee organization to become the recognized employee organization of an appropriate bargaining unit. (PERB Regulations 61210 et seq.; 61400 et seq.) In addition, both involve similar requirements with many of the same steps, including the requirement to file a petition, provide proof of employee support for the petition, and seek the creation of an appropriate bargaining unit. (*Ibid.*) The only major difference is that PERB's petition for certification process is used to create a new bargaining unit consisting of unrepresented employees whereas PERB's severance process is used to create a bargaining unit consisting of employees that are already members of an existing bargaining unit. (*Ibid.*)

As found in the March 15, 2011 OSC, City EER 7117, Article II, section 4 is also a process for recognizing the bargaining representative of an appropriate bargaining unit. The City's rule, however, makes no distinction between whether the employees in the proposed unit are unrepresented or whether they are part of an existing bargaining unit. Moreover, like PERB's severance and petition for certification process, City EER 7117, Article II, section 4 requires that a petition be filed, that the petitioner demonstrate employee support, and the proposed unit be appropriate. Because of the similarities in both purpose and process, the present case is distinguishable from *Siskiyou, supra*, PERB Decision No. 2113-M. In addition, unlike in *Siskiyou, supra*, PERB Decision No. 2113-M, it is undisputed in this case that severance has actually been achieved under City EER 7117, Article II, section 4.

The Association also contends that PERB should assert jurisdiction over its severance petition because the City only demonstrated one instance where EER 7117, Article II, section 4 was used in a severance context. The Association argues that the holding in *County of Orange, supra*, PERB Decision No. 2138 does not apply because in that case, severance was achieved under the employer's local rules multiple times. The Association characterizes the City's previous severance as an "anomaly." However, the Board's holding in *County of Orange, supra*, PERB Decision No. 2138 was not dependent on severance being achieved under the employer's local rules on multiple occasions. Rather, the central issue considered by the Board was whether severance could be achieved under the employer's local rules without placing an undue burden on the petitioner. (*Ibid.*) In the present case, the Association does not dispute that severance can be and has been achieved under EER 7117, Article II, section 4. Nor does the Association allege that application of the City's local rules places an undue burden on the Association's ability to pursue severance. Therefore, the Association's petition is dismissed.

² Under PERB Regulations, the process for becoming the recognized employee organization of a new bargaining unit is called "Petition for Certification." (PERB Regulation 61210.)

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 Los Angeles 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).)

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (Cal. Code Regs., tit. 8, § 32132).

Sincerely,

~~Eric J. Cu~~
Regional Attorney

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PUBLIC EMPLOYMENT RELATIONS BOARD

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March 15, 2011

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Re: Case No. LA-SV-166-M
City Of Inglewood
ORDER TO SHOW CAUSE

Dear Interested Parties:

The above-referenced severance petition was filed by Inglewood Police Civilians Association (Association) with the Public Employment Relations Board (PERB or Board) on October 25, 2010. The Association seeks to sever from the City of Inglewood's (City's) existing General Bargaining Unit a unit consisting of Custody Officers, Payroll Technicians, Property Officers, Police Training Assistants, Administrative Aides, Subpoena Clerks, Senior Forensic Specialists, Forensic Specialists, and Senior Administrative Aides. Service Employees International Union, Local 721 (SEIU) is the current recognized employee organization of the General Bargaining Unit.

On October 29, 2010, PERB sent the City a letter inquiring whether the City has adopted local rules pursuant to Meyers-Milias-Brown Act section 3507.1 (MMBA)¹ governing the process for severing positions from existing City bargaining units. On November 9, 2010, the City filed a response stating that the City Employee Employer Resolution 7117 (EER 7117) addresses representation matters but does not have a process specifically for processing severance petitions or unit modification petitions. The City further explained EER 7117, Article II, sections 4 through 8 contain a process for the recognition of new bargaining units and section 10 includes a corresponding process for determining the appropriateness of proposed bargaining units.

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

EER 7117, Article II, section 4 allows for an employee organization to become the recognized employee organization of an appropriate bargaining unit by filing a petition with the City Employee Relations Officer along with a statement that the employee organization possesses proof of employee support of at least 30 percent of the employees in the proposed bargaining unit. According to section 5, the City must issue a determination regarding whether a petition has complied with the filing requirements in section 4 and whether the bargaining unit proposed by the petition is appropriate. If the petition is properly filed and if it seeks to create an appropriate bargaining unit, section 7 outlines a process for holding an election.

The City's November 9, 2010 response also included records of an earlier petition filed by the Association with the City under EER 7117, Article II, section 4. In this earlier petition, the Association sought to create a unit similar to the unit proposed in the present matter. On July 20, 2010, the City stated that it was not appropriate for the Association to file a unit modification petition because EER 7117 does not contain a process with that name. The City then stated that it was rejecting the Association's petition because the petition would not be timely if filed according to the severance process contained in PERB Regulation 61010 and because the petition sought to create an inappropriate bargaining unit under EER 7117, Article II, section 10.

After receipt of the City's November 9, 2010 letter and accompanying documents, PERB sent a letter to all parties seeking further information. On December 3, 2010, SEIU filed a letter asserting its position that severance can be achieved through EER 7117, Article II. On December 6, 2010, the City filed a letter stating that PERB should dismiss the instant petition because the Association has petitioned for an inappropriate bargaining unit. On December 6, 2010, SEIU filed another letter providing further support for its earlier stated argument. SEIU further stated that the EER 7117 is reasonable.

An informal conference was held on February 8, 2011. During the informal conference, all parties acknowledged that the City has previously allowed certain positions to be severed from one of the City's existing bargaining units. PERB requested that the parties provide documents regarding this previous severance. On February 16, 2011, the City filed with PERB a set of documents regarding the Inglewood Police Civilian Management Association's (IPCMA's) petition to sever 17 positions from the existing general management employees bargaining unit represented by the Inglewood Management Employees Association (IMEO) and to create a new bargaining unit.² The petition, filed on or around May 19, 2009, was filed as a petition for recognition and unit modification under the City's EER, Article II, section 4. On November 9, 2009, the City informed the IPCMA that its petition complied with City EER, Article II, section 4 and that it was seeking to create an appropriate bargaining unit under section 10. Thereafter, an election was held pursuant to EER, Article II, section 7. The included documents do not specify the outcome of the election, but the parties do not dispute that IPCMA is the recognized employee organization of the bargaining unit claimed in the May 2009 petition.

² IPCMA's petition was filed by the City Employees Associates, the same organization that filed the instant petition on behalf of the Association.

Discussion:

As explained in PERB's October 29, 2010 letter, the City and its employees are subject to the MMBA. PERB Regulations at 61400 et seq. provide for the processing of severance petitions by PERB.³ However, pursuant to PERB Regulation 61000, PERB will only conduct representation proceedings in such cases where a public agency has not adopted local rules under which severance can be achieved.

In *County of Orange* (2010) PERB Decision No. 2138, the Board interpreted PERB Regulation 61000. In that case, PERB found that the "absence of an explicit local representation rule does not mean, however, that PERB regulations necessarily apply." (*Ibid.*) Instead, PERB has the authority to assert jurisdiction and apply its own representation rules "only when the agency's local rules contain no provision that can accomplish what the petitioner is seeking without placing an undue burden on the petitioner." (*Ibid.*, citing *County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M.) The Board in that case found that severance could be achieved under a county's local rules, even though no express severance process existed. The Board relied, in part, on the fact that the county applied its local rules to achieve severance in the past. (*Ibid.*) In a related case, the Board found that, because severance could be achieved under the county's local rules, PERB lacked jurisdiction to process a separate PERB-filed severance petition. (*County of Orange* (2010) PERB Order No. Ad-386.)

In the present matter, on July 20, 2010, the Association filed a petition directly with the City seeking to sever the same classifications identified in the present severance petition. The City rejected this petition based, in part, on its finding that the Association sought to create an inappropriate bargaining unit under EER 7117, Article II, section 10. Section 5 allows for the City to reject representation petitions on this basis. Thereafter, the Association filed the instant petition with PERB.

A plain reading of the language in City ERR 7117 allows for severance to be achieved under the recognition petition process contained in Article II, section 4. The City's petition for recognition process is similar to PERB's petition for certification process contained in PERB Regulation 61210 et seq. Both processes allow for a public agency to recognize an employee organization in a proposed bargaining unit upon a showing of support from the proposed unit and a finding that the proposed unit is appropriate. However, under PERB's petition for certification process, an employee organization may not petition for positions that are already represented in another established bargaining unit. PERB Regulations contemplate a separate process for those circumstances. (See PERB Regulation 61400 et seq.)

³ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

City EER 7117, Article II, on the other hand, makes no distinction regarding whether the petitioned-for positions are included in an already-established bargaining unit. Thus, a reasonable interpretation of this difference is that the EER allows for a single process for achieving recognition for either unrepresented and represented positions. This conclusion is supported by the undisputed fact that severance was previously achieved by filing a petition under City EER 7117, Article II, section 4.⁴

If severance can be achieved under City EER 7117, then PERB lacks jurisdiction to further process the Association's petition. (*County of Orange, supra*, PERB Order No. Ad-386.) In light of the above, the Association is afforded this opportunity to SHOW CAUSE as to why the instant petition should not be dismissed for lack of jurisdiction. Factual assertions must be supported by declarations under penalty of perjury by witnesses with personal knowledge and should indicate that the witness, if called, could competently testify about the facts asserted. If the facts asserted are reliant on a writing, the writing must be attached to the declaration and authenticated therein. Legal argument and supporting materials must be filed with the undersigned no later than April 1, 2011. Service and proof of service pursuant to PERB Regulation 32140 are required.

Upon receipt of the Association's argument and factual assertions, or the expiration of the time allowed for same, the undersigned shall contact each of the parties regarding further case processing steps, including a deadline for responses to the Association's submittal, if requested.

Sincerely,

Eric J. Cu
Regional Attorney

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⁴ PERB makes no finding regarding whether the City EER 7117 contains a reasonable process to achieve severance or whether the City violated the MMBA or PERB regulations by denying the Association's July 2010 petition. Those issues are not properly raised through this petition.