STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO HOUSING AUTHORITY, Employer, and UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY, LOCAL UNION 38, Exclusive Representative.	Case No. SF-UM-747-M Administrative Appeal PERB Order No. Ad-420-M April 28, 2015

Appearances: Renne, Sloan, Holtzman & Sakai by Jonathan V. Holtzman and Genevieve Ng, Attorneys, for San Francisco Housing Authority; Neyhart, Anderson, Flynn & Grosboll by Benjamin K. Lunch, Attorney, for United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local Union 38.

Before Huguenin, Winslow and Banks, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local Union 38 (Local 38) from an administrative determination (attached) dismissing Local 38's unit modification petition filed on June 20, 2014, pursuant to the Meyers-Milias Brown Act (MMBA)[1] and PERB Regulation 61450(b)(3).[2] Local 38's petition concerns work performed in and after October 2013 by maintenance mechanics employed by the San Francisco Housing Authority (Employer) and placed in a bargaining unit represented by Laborers Union, Local 261 (Laborers). Local 38's petition avers, and seeks a PERB determination, that prior to October

[1] The MMBA is codified at Government Code section 3500 et seq.

[2] PERB regulations are codified at California Code of Regulations, title 8, section 31000 et seq.

2013 the maintenance mechanic work was performed traditionally by Local 38's plumbers and steamfitters bargaining unit members, that in and after October 2013 and in contravention of this tradition the Employer assigned the maintenance mechanic work to a bargaining unit represented by Laborers, and that the maintenance mechanic work should be reassigned to the plumbers and steamfitters bargaining unit represented by Local 38.

Following its investigation, PERB's Office of the General Counsel determined that PERB's unit modification procedures permit the transfer of positions or classifications between bargaining units, but that petitions seeking such transfer must be filed jointly by all the affected exclusive representatives. On this basis, PERB's Office of the General Counsel dismissed Local 38's petition, which was filed only by Local 38 and not joined in by Laborers. Local 38 filed a timely appeal. The Employer and Laborers oppose the appeal.

We have reviewed the entire record, including Local 38's petition and the Laborers' response, correspondence to Local 38 from PERB's Office of the General Counsel, Local 38's response, the ensuing dismissal, and the parties' submissions on appeal. Because the findings set forth in the dismissal are supported by the record, we adopt them as the findings of the Board itself. Similarly, because the conclusions of law set forth in the dismissal are well reasoned and in accordance with applicable Board procedures and our decisions thereunder, we adopt them as the conclusions of the Board itself, subject to our discussion below of the appeal taken by Local 38.

PROCEDURAL AND FACTUAL HISTORY

On June 20, 2014, Local 38 filed a petition pursuant to PERB Regulations 61450(b)(3) seeking "[t]o resolve a dispute as to unit placement or designation of a new classification or position." The petition avers that since October 2013, the Employer has been hiring employees into a maintenance mechanics classification, which has been added to a bargaining unit

represented by Laborers, and that the duties being performed by the maintenance mechanics so hired are those traditionally performed by members of Local 38's plumbers and steamfitters bargaining unit. The petition seeks a return to the alleged status quo existing prior to October 2013, to be accomplished by removal of the maintenance mechanic classification from the Laborers bargaining unit.

By letter of June 24, 2014, to Local 38, PERB's Office of the General Counsel informed Local 38 that PERB's unit modification procedure "is generally used to resolve a dispute between an employer and an exclusive representative concerning the composition of that exclusive representative's own unit," and that instead Local 38's petition "seeks to modify a different exclusive representative's bargaining unit." The letter also directed Local 38 to "provide support for the proposition that PERB's unit modification process can be used to delete represented classifications from a bargaining unit other than the petitioner's own."

On July 7, 2014, Local 38 replied to the June 24, 2014, letter stating that Local 38 did not seek to transfer the maintenance mechanic position to its plumbers and steamfitters bargaining unit, but rather seeks to transfer "the plumbing and steamfitting work performed by maintenance mechanics or maintenance specialists back to its unit." Local 38 urged that the requirement of a joint petition is inapplicable here because Local 38 seeks the transfer of work rather than the transfer of the position or classification of maintenance mechanic. In addition Local 38's reply stated that the remedy it seeks is consistent with prior PERB decisions permitting transfer of classifications between bargaining units, citing *San Diego Community College District* (2001) PERB Decision No. 1445 and *Trustees of the California State University* (2007) PERB Decision No 1881-H (*Trustees*).

On July 11, 2014, Laborers notified PERB's Office of the General Counsel and the parties by letter that there was then in effect a memorandum of understanding (MOU) between

Laborers and the Employer "covering the positions which [Local 38] seeks to extract from the bargaining unit represented by Laborers," and urging that in consequence of the existence of the MOU, Local 38's "petition for unit modification is barred under PERB Regulations."

On September 26, 2014, PERB's Office of the General Counsel dismissed Local 38's petition. The dismissal states, in pertinent part:

> [Local 38] correctly states that PERB permits unit modification petitions that seek to transfer classifications between bargaining units, citing *San Diego Community College District* (2001) PERB Decision no. 1445 as an example. However, such petitions must be filed jointly by "[a]ll affected exclusive representatives" pursuant to PERB Regulation 61450(c). (*Modesto City School District* (1991) PERB Decision No. 884 ("Under PERB's unit modification regulations... an exclusive representative may not file a petition to add a position currently represented by another exclusive representative to its bargaining unit.") The Laborers do not join in the instant petition.
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> [Local 38] also cites *Trustees of the California State University* (2007) PERB Decision No. 1881-H (*Trustees*). In that case, the employer filed a petition to eliminate two existing classifications, create a new classification combining duties of the abolished classifications, and to resolve a dispute about the placement of the new classification within an existing bargaining unit. The abolished classifications had belonged to two different bargaining units. However, *Trustees* is inapposite. There, the new classification was yet to be placed in any bargaining unit. In the instant case, the classification at issue has been within the Laborers bargaining unit since at least October 2013.
>
> When the employees covered by a petition [for unit modification] are currently represented, an employee organization unilaterally desiring to represent them must file a decertification petition pursuant to PERB Regulation 61350 et seq., or a severance petition pursuant to PERB Regulation 61400 et seq. The litany of requirements contained within those provisions—including proof of employee support, and restrictions on the timing of petitions—would be undermined if a petitioner could file a unilateral and hostile unit modification petition.
>
> To the extent that [Local 38] states that it is seeking to transfer "work," rather than positions or classifications, a unit modification petition is not appropriate. PERB unit modification

> procedures concern the appropriate inclusion or exclusion of "positions" or "classifications" from a bargaining unit.
>
> To the extent that [Local 38] argues the [Employer's] placement of the maintenance mechanic classification within the Laborer's bargaining unit violated the MMBA, [Local 38] may file an unfair practice charge. (*Modesto City School District, supra,* PERB Decision No. 884.)

(Dismissal, pp. 2-3.)

On November 10, 2014, Local 38 filed its appeal from the dismissal.

On November 14, 2014, Laborers filed its opposition to the appeal.

On December 8, 2014, the Employer filed its opposition to the appeal.

PARTIES' CONTENTIONS ON APPEAL

On appeal, Local 38 reiterates its contention that PERB's unit modification procedures are, or should be, available to a union seeking to challenge an employer's removal of work from its bargaining unit and placement of that work in a different bargaining unit. Limiting unit modification petitions seeking to move positions or classifications between bargaining units only to those petitions having approval of both the receiving and sending union is unfair, claims Local 38, because the sending union would never consent.

Laborers opposes the appeal, rejoining that there are circumstances in which a sending union would consent, and that in any event PERB lacks authority over an employer's assignment of work which is an "internal matter" governed by contract between the union and the employer.

The Employer likewise opposes the appeal, urging that Local 38's sole recourse to challenge placement of the maintenance mechanic work in Laborers' bargaining unit was to file a timely unfair practice charge, which it did not do, and that having failed timely to challenge the work assignment under the appropriate unfair practice procedures, it may not

now resort to PERB's unit modification procedures as these are inappropriate for the reasons stated in the dismissal.

DISCUSSION

Local 38 claims on appeal that the dismissal misreads PERB regulations, because: (1) Local 38's unit modification petition need not be joined by the Laborers; and (2) unit modification petitions are not limited to transfer of positions. We consider each claim.

Local 38 contends that PERB's Office of the General Counsel misreads PERB Regulation 61450(c)[3] to the extent it considers Laborers an "affected" exclusive representative. First, Local 38 urges that it is only itself which is an "affected" exclusive representative within PERB Regulation 61450(c), because only Local 38 lost bargaining unit work. Describing Laborers as the "beneficiary" of the Employer action which Local 38 here challenges, Local 38 urges that requiring Laborers to join in the unit modification petition produces an "absurd result," since the union having benefited from the challenged action would never agree to join the petition.

Second, Local 38 proffers an alternative reading of the regulation, namely, that PERB Regulation 61450(c) is inapplicable because what Local 38 seeks to transfer from the Laborers

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[3] PERB Regulation 61450. Petition.

> Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.
>
> [¶ . . . ¶]
>
> (c) *All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.*

(Emphasis added.)

unit to its own unit is "work," and not a "classification or position." In support of its alternative reading it cites to the dismissal's reliance on *Modesto City School District* (1991) PERB Decision No. 884 for the proposition that what may not be added to a unit via a unit modification petition is "a *position* currently represented by another exclusive representative." (Dismissal, p. 2; emphasis added.)

We find neither rationale convincing. First, on the facts here Laborers clearly is an "affected" exclusive representative in that if Local 38's petition were granted, Laborers would be affected. The language of PERB Regulation 61450(c) is "affected," not "adversely affected." Accordingly, we reject Local 38's contention that Laborers is not an "affected" exclusive representatives within PERB Regulation 61450(c). Second, PERB Regulation 61450 speaks of "classifications or positions" and not of "work." Therefore, a petition which seeks to transfer "work" or a union's "jurisdiction over work," but not a "classification or position," fails to meet the requirements of the regulation.

Local 38 expands on its contention that "work" may be the subject of a unit modification petition in its second point on appeal, viz., that such petitions are not limited to transfer of positions, and that permitting Local 38's present petition would not undermine the decertification process. The dismissal noted the potential for undermining the decertification process implicit in this case in a footnote, as follows:

> Unit modification petitions to add positions or classifications to a petitioner's bargaining unit, increasing its size by ten percent or more, require proof of majority support of the persons employed in the positions or classifications to be added. (PERB Regulation 61450(e)(1).) Petitions to delete a position or classification from an established bargaining unit pursuant to PERB Regulation 61450(b)(4) may not be filed during the term of a lawful written agreement covering the position or classification, except during the window period defined in PERB Regulation 61010. Here the Petition states that the classification at issue includes 28 to 30 persons, where its existing unit contains only 9, though no proof of support was filed. No information is

> provided about the status of any agreement between the Laborers and the [Employer] at the time the Petition was filed. Therefore, whether the Petition intends to add maintenance mechanics to [Local 38's] unit, or merely to delete them from the Laborer's unit, it is deficient for these reasons in addition to those discussed above.

(Dismissal, p. 2, fn. 2.) We concur.

Local 38 cites two Board decisions which it claims support the appropriateness of a unit modification petition to affect a transfer of "work." We consider each.

In *Trustees, supra,* PERB Decision No. 1881-H, discussed in the dismissal, the Board reviewed an administrative law judge's (ALJ) proposed decision resolving a dispute regarding the appropriate unit placement for a new *classification.* The dispute concerned whether the new *classification* was appropriately placed in Unit 7, clerical and administrative support services, or in Unit 4, academic support. The ALJ had proposed to place the new *classification* in Unit 4 as opposed to Unit 7, applying the rebuttable presumption test. (*State of California (Department of Personnel Administration)* (1990) PERB Decision No. 794-S.) The Board determined that rather than the rebuttable presumption test applicable when seeking to modify a previously-Board-determined state bargaining unit, the appropriate test for adding a new *classification* to an established unit was found in the Higher Education Employer-Employee Relations Act (HEERA) section 3579,[4] viz., analysis of the traditional unit determination criteria such as "shared goals, training, working conditions, interchange with other employees, etc." (*Trustees.*) Concluding that the evidentiary record developed at the hearing was inadequate to this task, the Board remanded to permit augmentation of the record.

We do not read *Trustees, supra,* PERB Decision No. 1881-H as does Local 38. The unit modification issue there presented clearly concerned a new "classification," not "work." We thus find Local 38's contentions regarding *Trustees* unpersuasive.

[4] HEERA is codified at Government Code section 3560 et seq.

In *Regents of the University of California* (2011) PERB Decision No. 2185-H (*Regents*), not discussed in the dismissal, the Board reviewed an ALJ's decision resolving a dispute regarding the appropriate unit placement for certain *positions* which were placed in the system-wide clerical and allied services unit and the appropriate PERB regulation applicable to the dispute. The employer proposed to remove the *positions* from the unit altogether on the basis of reclassification utilizing PERB Regulation 32781(b)(3) (resolution of dispute regarding unit placement), while the union urged that the *positions* should be assigned to a different *classification* within the unit utilizing PERB Regulation 32781(b)(2) (clarification of unit description). The ALJ determined that the employer's contentions were the more appropriate and applied PERB Regulation 32781(b)(3) to conclude that the *positions* should be excluded from the unit. The Board affirmed.

Again, we do not read *Regents, supra,* PERB Decision No. 2185-H as does Local 38. The unit modification issue there presented clearly concerned appropriate placement of existing "positions," not "work." We thus find Local 38's contentions regarding *Regents* unpersuasive.

CONCLUSION

For the reasons set out above, as well as those set forth in the administrative determination, we dismiss Local 38's appeal.

ORDER

The administrative determination in Case No. SF-UM-747-M is hereby AFFIRMED.

Members Winslow and Banks joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
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September 26, 2014

Benjamin K. Lunch, Attorney
Neyhart, Anderson, Flynn & Grosboll
369 Pine Street, Suite 800
San Francisco, CA 94104-3323

Re: Case No. SF-UM-747-M
San Francisco Housing Authority
DISMISSAL OF PETITION

Dear Mr. Lunch:

The above-referenced unit modification petition (Petition) was filed with the Public Employment Relations Board (PERB or Board) on June 20, 2014 by UA Local 38 (Petitioner), which represents a unit of Plumbers and Steamfitters employed by the San Francisco Housing Authority (Authority). The petition is filed pursuant to PERB Regulation 61450(b)(3),[1] which states:

> (b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:
> ...
> (3) To resolve a dispute as to unit placement or designation of a new classification or position.

The Petition asserts that the Authority has, since October 2013, been hiring employees into a "maintenance mechanic" classification, that has been added to a bargaining unit represented by Laborers Union, Local 261 (Laborers). Petitioner asserts that the duties being performed by the maintenance mechanics are "traditionally performed by Petitioner's members," in the Plumbers and Steamfitters unit. The petition itself states that it seeks to "return to the status quo ante," and appears to seek the removal of the maintenance mechanic classification from the Laborers bargaining unit.

On June 24, 2014, this office directed Petitioner to provide support for the proposition that PERB's unit modification process can be used to delete represented classifications from a bargaining unit other than the petitioner's own. Petitioner filed a response on July 7, 2014

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

stating that Petitioner is not actually seeking to transfer the maintenance mechanic position to the Plumbers and Steamfitters bargaining unit. "Rather, Local 38 is interested in transferring the plumbing and steamfitting work performed by maintenance mechanics or maintenance specialists back to its unit." [Emphasis in original.]

Petitioner correctly states that PERB permits unit modification petitions that seek to transfer classifications between bargaining units, citing *San Diego Community College District* (2001) PERB Decision No. 1445 as an example. However, such petitions must be filed jointly by "[a]ll affected exclusive representatives" pursuant to PERB Regulation 61450(c). (*Modesto City School District* (1991) PERB Decision No. 884 ("Under PERB's unit modification regulations... an exclusive representative may not file a petition to add a position currently represented by another exclusive representative to its bargaining unit.") The Laborers do not join in the instant petition.

Petitioner also cites *Trustees of the California State University* (2007) PERB Decision No. 1881-H (*Trustees*). In that case, the employer filed a petition to eliminate two existing classifications, create a new classification combining the duties of the abolished classifications, and to resolve a dispute about the placement of the new classification within an existing bargaining unit. The abolished classifications had belonged to two different bargaining units. However, *Trustees* is inapposite. There, the new classification was yet to be placed in any bargaining unit. In the instant case, the classification at issue has been within the Laborers bargaining unit since at least October 2013.

When the employees covered by a petition are currently represented, an employee organization unilaterally desiring to represent them must file a decertification petition pursuant to PERB Regulation 61350 et seq., or a severance petition pursuant to PERB Regulation 61400 et seq. The litany of requirements contained within those provisions—including proof of employee support, and restrictions on the timing of petitions—would be undermined if a petitioner could file a unilateral and hostile unit modification petition.[2]

[2] Unit modification petitions to add positions or classifications to a petitioner's bargaining unit, increasing its size by ten percent or more, require proof of majority support of the persons employed in the positions or classifications to be added. (PERB Regulation 61450(e)(1).) Petitions to delete a position or classification from an established bargaining unit pursuant to PERB Regulation 61450(b)(4) may not be filed during the term of a lawful written agreement covering the position or classification, except during the window period defined in PERB Regulation 61010. Here, the Petition states that the classification at issue includes 28 to 30 persons, where its existing unit contains only 9, though no proof of support was filed. No information is provided about the status of any agreement between the Laborers and the Authority at the time the Petition was filed. Therefore, whether the Petition intends to add maintenance mechanics to Petitioner's unit, or merely delete them from the Laborer's unit, it is deficient for these reasons in addition to those discussed above.

To the extent that Petitioner states that it is seeking to transfer "work," rather than positions or classifications, a unit modification petition is not appropriate. PERB unit modification procedures concern the appropriate inclusion or exclusion of "positions" or "classifications" from a bargaining unit.

To the extent that Petitioner argues the Authority's placement of the maintenance mechanic classification within the Laborer's bargaining unit violated the MMBA, Petitioner may file an unfair practice charge. (See *Modesto City School District, supra*, PERB Decision No. 884.)

For all of the above stated reasons, the Petition is hereby dismissed.

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 LocName 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,

Daniel Trump
Regional Attorney

DT

cc: Genevieve Ng, Attorney
Stewart Weinberg, Attorney
Barbara Smith, Executive Director