STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 817, Charging Party, v. COUNTY OF MONTEREY, Respondent,	Case No. SF-CE-41-M PERB Decision No. 1663-M July 16, 2004
MONTEREY COUNTY DISPATCHERS' ASSOCIATION, Intervener.	

Appearance: Silver & Katz by Larry Alan Katz, Attorney, for Monterey County Dispatchers' Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (Board) on exceptions filed by the Monterey County Dispatchers' Association (MCDA) to a proposed decision (attached) of the administrative law judge (ALJ). The ALJ found that the County of Monterey (County) violated the Meyers-Milias-Brown Act (MMBA)[1] by registering the MCDA as an employee organization under the County's local rules. By doing so, the ALJ found that the County violated its duty of strict neutrality between two competing employee organizations.

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

The Board has reviewed the entire record in this matter, including the proposed decision and MCDA's exceptions. The Board finds the ALJ's findings of fact and conclusions of law in Case No. SF-CE-41-M to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

DISCUSSION

MCDA has filed several exceptions to the proposed decision. Those exceptions center on the ALJ's finding that the duty of strict neutrality was violated. MCDA argues that since the ALJ found that the County's local rule was unreasonable, any discussion about the neutrality violation is moot.

MCDA's exceptions must be rejected. Contrary to its assertions, the ALJ did not find that the local rule at issue was unreasonable. Rather, the ALJ found that the local rule was unreasonable as applied to the specific facts of this case. It is this narrow ground upon which the ALJ's proposed decision is based and which the Board adopts.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the County of Monterey (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3502, 3503, 3506, and 3507 and Public Employment Relations Board Regulations 32603(a), 32603(b), 32603(d), and 32603(f) (Cal. Code Regs., tit. 8, sec. 31001, et seq.), by registering the Monterey County Dispatchers' Association (MCDA) as an employee organization, maintaining and enforcing an unreasonable regulation as applied to MCDA's petition only, interfering with the right of County employees to participate in the activities of an employee organization of their own choosing, and denying the

Service Employees International Union, Local 817 (SEIU) its right to represent employees in their employment relations with a public agency.

Therefore, pursuant to MMBA section 3509(b), it is hereby ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Enforcing the April 1, 2002, decision to register MCDA as an employee organization;

2. Contributing support to MCDA as a result of registering it;

3. Encouraging employees to join MCDA in preference to SEIU as a result of registering MCDA as an employee organization;

4. Maintaining and enforcing an unreasonable regulation as applied to MCDA's petition for registration;

5. Interfering with the right of County employees to participate in the activities of an employee organization of their own choosing; and

6. Denying SEIU its right to represent employees in their employment relations with a public agency.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Within ten (10) workdays following the date this decision is no longer subject to appeal, rescind the findings contained in the April 1, 2002, letter that MCDA is a registered employee organization under the County's Employer-Employee Relations Resolution.

2. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all locations where notices are customarily posted, copies of the

notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that the County will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance with the director's instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on SEIU and MCDA.

Chairman Duncan and Member Whitehead joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case Nos. SF-CE-41-M and SF-CE-63-M, Service Employees International Union, Local 817 v. County of Monterey, in which the parties had the right to participate, it has been found that the County of Monterey (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3502, 3503, 3506 and 3507, and Public Employment Relations Board Regulations 32603(a), 32603(b), 32603(d), and 32603(f) (Cal. Code Regs., tit. 8, sec. 31001, et seq.), when it registered the Monterey County Dispatchers' Association (MCDA) pursuant to its Employer-Employee Relations Resolution, Section IV, paragraph D, while Service Employees International Union, Local 817 (SEIU) was the exclusive representative for the employees covered by those petitioning employee organizations. This conduct also interfered with the right of County employees to participate in the activities of an employee organization of their own choosing and denied SEIU its right to represent employees in their employment relations with a public agency.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Enforcing the April 1, 2002, decision to register MCDA as an employee organization;

2. Contributing support to MCDA as a result of registering it;

3. Encouraging employees to join MCDA in preference to SEIU as a result of registering MCDA as an employee organization;

4. Maintaining and enforcing an unreasonable regulation as applied to MCDA's petition for registration;

5. Interfering with the right of County employees to participate in the activities of an employee organization of their own choosing; and

6. Denying SEIU its right to represent employees in their employment relations with a public agency.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

Rescind the findings contained in the April 1, 2002, letter that MCDA is a registered employee organization under the County's Employer-Employee Relations Resolution.

Dated: _____ COUNTY OF MONTEREY

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 817, Charging Party, v. COUNTY OF MONTEREY, Respondent, MONTEREY COUNTY DISPATCHERS' ASSOCIATION, Intervenor.	UNFAIR PRACTICE CASE NO. SF-CE-41-M
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 817, Charging Party, v. COUNTY OF MONTEREY, Respondent, MONTEREY COUNTY PARK RANGERS' ASSOCIATION, Intervenor.	UNFAIR PRACTICE CASE NO. SF-CE-63-M PROPOSED DECISION (4/29/03)

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld, by Antonio Ruiz, Attorney, for Service Employees International Union, Local 817; Ellen M. Jahn, Deputy County Counsel, for County of Monterey; Silver & Katz, by Lawrence Katz, Attorney, for Monterey County Dispatchers' Association and Monterey County Park Rangers' Association.

Before Donn Ginoza, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, an exclusive representative claims that the county employer's processing of two employee organization requests to be "registered" under the local labor relations ordinance in anticipation of decertification campaigns, and the granting of such status based on unit appropriateness determinations, unlawfully influenced employee choice in favor of the two challengers.

On May 28, 2002, the Service Employees International Union, Local 817 (SEIU) initiated the first of the two actions consolidated here by filing an unfair practice charge against the County of Monterey (County) (Case No. SF-CE-41-M). On August 22, 2002, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint. The complaint alleges that the County, by allowing the Monterey County Dispatchers' Association (MCDA) to register as an employee organization under the County's Employer-Employee Relations Resolution (EERR), encouraged employees to join MCDA in preference to SEIU. This conduct is alleged to violate sections 3502, 3503 and 3506 of the Meyers-Milias-Brown Act (MMBA)[1] and PERB Regulation

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

Section 3502 provides:

> Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency.

Section 3503 provides:

32603(a), (b), and (d).[2] The complaint further alleges that by processing the request under provisions of the EERR, the County enforced an unreasonable local rule or regulation. This

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> Recognized employee organizations shall have the right to represent their members in their employment relations with public agencies. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the public agency.

Section 3506 provides:

> Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502.

[2] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32603 provides, in relevant part, that it is an unfair practice for a public agency to do any of the following:

> (a) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.
>
> (b) Deny to employee organizations rights guaranteed to them by Government Code section 3503, 3504.5, 3505.1, 3505.3, 3508[d] [as a result of AB 105 (Stats. 2002, chap. 865), section 3508(c) was renumbered 3508(d)] or 3508.5 or by any local rule adopted pursuant to Government Code section 3507.
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> . . . . . .
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> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another in violation of rights guaranteed by Government Code section 3502 or 3508[d] or any local rule adopted pursuant to Government Code section 3507.

conduct is alleged to violate MMBA sections 3503 and 3506, and 3507[3] and PERB Regulation 32603(a), (b), and (f).[4]

On September 16, 2002, the County filed an application for joinder of MCDA as a party.

On September 23, 2002, the County answered the complaint in Case No. SF-CE-41-M, denying all material allegations and asserting a number of affirmative defenses.

On October 1, 2002, an informal settlement conference was held before PERB in Case No. SF-CE-41-M, but the dispute was not resolved.

On October 28, 2002, SEIU filed a second unfair practice charge against the County (Case No. SF-CE-63-M). On December 5, 2002, the Office of the General Counsel issued a complaint. The complaint alleges that the County, by allowing the Monterey County Park Rangers' Association (MCPRA) to register as an employee organization under the County's EERR, encouraged employees to join MCPRA in preference to SEIU. This conduct is alleged to violate MMBA sections 3502, 3503 and 3506 and PERB Regulation 32603(a), (b), and (d). The complaint further alleges that by processing the request under provisions of the EERR, the

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[3]Section 3507 provides, in pertinent part:

> A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under this chapter (commencing with Section 3500).

[4] Regulation 32603(f) provides that it is an unfair practice for a public agency to:

> Adopt or enforce a local rule that is not in conformance with the requirements of Government Code section 3507, 3507.1 and/or 3507.5.

County enforced an unreasonable local rule or regulation. This conduct is alleged to violate MMBA sections 3503 and 3506, and 3507 and PERB Regulation 32603(a), (b), and (f).

On December 19, 2002, the County answered the complaint in Case No. SF-CE-63-M, denying all material allegations and asserting a number of affirmative defenses. On the same day, MCPRA filed an application to be joined as a party. No informal settlement conference was held in Case No. SF-CE-63-M.

On January 6, 2002, the undersigned administrative law judge (ALJ) granted the applications for joinder of MCDA and MCPRA and ordered the two matters consolidated for formal hearing.

On February 5, 2003, a formal hearing was held before the undersigned ALJ. With the filing of the parties' post-hearing briefs on April 17, 2003, the matter was submitted for decision.

FINDINGS OF FACT

The County is a "public agency" within the meaning of section 3501(c). SEIU is an "employee organization" within the meaning of section 3501(a) and an "exclusive representative" of a bargaining unit of County employees within the meaning of PERB Regulation 32016(b).

The County employs a total of over 4000 employees. SEIU's unit is described as the "J" (or "General") unit and consists of approximately 1898 employees. It is the single largest bargaining unit within the County. At all times relevant to the matters herein, SEIU and the County were parties to a memorandum of understanding (MOU). The last negotiated MOU covered the period from July 1, 1999 through June 30, 2002. That agreement was mutually extended by the parties so as to cover times relevant herein.

The Dispatchers' Petition to Register MCDA

The J Unit contains a series of job classifications that include the County's communication dispatchers.

Sometime prior to March 2002, employees in the dispatcher classifications founded MCDA as an employee organization. MCDA established a mailing address in Salinas, California and elected officers. MCDA contacted the Northern California legal counsel for the California Organization of Police and Sheriffs (COPS) with the purpose of retaining the firm of Silver & Katz, attorneys for COPS, to represent MCDA in its employment relations with the County.

By letter dated March 11, 2002, Larry Katz notified the County that MCDA sought to "establish an employee organization that is recognized as the exclusive bargaining unit for non-supervisory dispatchers." The March 11 cover letter included documents identified as the "Registration and Petition for Recognition for Employee Organization." The purpose of the document was actually two-fold: to "register" MCDA, pursuant the procedures of the EERR, and to petition for recognition of MCDA as the exclusive representative for non-supervisory dispatchers.

Katz's letter acknowledged that dispatchers are currently members of the J Unit represented by SEIU and that their petition for recognition would involve severance of the positions from the unit. Katz asserted that dispatchers maintain a community of interest that "is vastly different than those represented by SEIU." Katz further asserted that "[a]s an identifiable minority within their bargaining unit they are denied the ability to raise issues that significantly affect the terms and conditions of their employment."

The MCDA petition contained signatures for 40 dispatchers, or all but two or three of the total group.

Section IV ("Requirements for Registration of Employee Organizations") of the EERR requires that an "[a]n employee organization which wishes to take preliminary steps toward anticipated recognition (as set forth in Section VI hereof) by registering as an employee organization," must submit a petition containing a number of pieces of information. Apart from basic identifying information, the critical requirement for purposes of this case is contained in paragraph D (Section IV(D)), as follows:

> A statement that the employee organization includes three percent (3%) of the employees in permanent authorized positions in the County, along with proof that these employees desire the organization to represent them, provided however, that an organization which represents less than three percent (3%) of the employees in the County may petition for registration with the Employee Relations Officer provided that the organization meets all the other requirements of this resolution. Registration of an organization which represents less than three percent (3%) of the employees of the County shall only be granted upon a demonstration satisfactory to Management that the employees to be represented are a unique group whose distinct community of interests makes it highly unlikely that they could receive adequate representation with any of the current registered organizations. Proof of employee approval which must be supplied shall be as defined in Section I of this Resolution. [Emphasis added.]

MCDA "represents" less than 3 percent of the County's employees (i.e., fewer than approximately 120).[5]

Section V ("Registration of Employee Organization") of the EERR provides in pertinent part:

[5] It appears that "represents" in Section IV(D) is the equivalent to the employee organization's proof of support, although it could be construed as the unit proposed to be represented. The correct interpretation is not a material issue here.

> Upon receipt and verification by the Employee Relations Officer of all the information required by Section IV of this Resolution, the Employee Relations Officer shall notify the organization that it has been registered as an Employee Organization. Registration pursuant to this section shall not constitute formal acknowledgement of recognition and said acknowledgement shall only be as specified in Section VI of this resolution.

Section VI ("Representation, Proceedings") provides procedures by which a "registered" employee organization seeking certification as a "recognized" employee organization for the purpose of exclusively representing a representation unit may petition for a secret ballot, representation election. Paragraph E establishes the County's decertification procedure. A decertification petition requires a 30 percent proof of support within the representation unit. Paragraph E sets forth a contract bar provision establishing that where "a multi-year Memorandum of Understanding is in effect for a particular representation unit, a decertification petition may only be filed during September of the last year of such multi-year Memorandum of Understanding." Paragraph E states: "A petition for decertification may be combined with a petition that seeks to certify a Registered Employee Organization as a Recognized Employee Organization."

Section VII ("Policy and Standards for Determination of Appropriate Units") defines the following policy objectives:

> (1) the efficient operations of the County and its compatibility with the primary responsibility of the County and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations.

These policy objectives "require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest."[6]

[6] The same section goes on to list the following factors to be considered:

Section IX ("Modification of Representation Units") contains provisions allowing either a registered or recognized employee organization to petition for the modification of an established unit. A 50 percent showing of support within the proposed unit is required. Once filed, the County must give notice of the petition to the unit employees and the recognized employee organization(s) for the unit(s) affected. Paragraph C of this section provides that employees in the proposed unit or those in the original unit may "challenge the appropriateness of the proposed modified representation unit and petition for the establishment of a different unit." Such a challenge requires proof of support. If the petitioners cannot agree on the appropriateness of the unit, the issue is resolved by the County's employee relations officer

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A. The unit shall include the broadest feasible groups of employees based upon internal and occupational community of interest. Fragmentation of units is to be avoided.

B. The effect of the proposed unit on the efficient operation of County services and on sound employer-employee relations.

C. Consistency with the organizational patterns of the County.

D. The history of employee relations in the unit, among other employees in the County, and in similar public employment.

E. Similarity of duties, skills, and working conditions of employees.

F. No County employment classification title shall be included in more than one representation unit. Supervisory employees and non-supervisory employees shall not be included in the same unit.

G. Professional employees shall not be denied the right to be represented separately from non-professional employees by a professional employee organization consisting of such employees.

H. Management and/or confidential employees shall not be included in any unit which includes non management and/or non confidential employees.

through the EERR's appeal process, following a hearing and decision, as set forth in Section X ("Appeals"). That process culminates in a final and binding decision by the County's board of supervisors.

The County's Processing of the Dispatchers' Petition

The County's labor relations staff includes the chief analyst, and three labor relations representatives. At all times relevant to this case, Keith Honda was the chief analyst. Honda was responsible for assigning work within the department. Esteban Codas is a labor relations representative. As such, Codas is responsible for all matters related to employer-employee relations, including MOU negotiations, grievance processing, and other matters.

Honda assigned review of the dispatchers' petition to Codas. Codas determined that the dispatchers' petition sought both registration and recognition. Codas found that the requirements with respect to registration were fulfilled, but those for recognition were not due to the contract bar rule. Codas determined that the dispatchers constituted less than three percent of the employees within the County and therefore would be required to meet the requirements of Section IV(D).

With respect to these criteria, Codas concluded that dispatchers were a distinct group of employees. He made this determination based on his own knowledge of the duties of the dispatchers. Codas explained that in order to fulfill the requirement of a unique community of interest, the duties of the classifications in the requested unit would have to be "sufficiently dissimilar to other classifications."

In analyzing the community of interests of dispatchers, Codas relied on their separate location, their duties, with whom they worked, and to whom they reported. A significant characteristic of the job classifications was that dispatchers are subject to minimum staffing

requirements. Codas testified that the petition for registration could be accepted "at face value" with respect to the requirement that the employees were not currently receiving adequate representation.

SEIU identifies what it considers an inconsistency in the testimony of Honda and Codas: Honda believed that the determination as to the under-three-percent rule could be deferred, while Codas proceeded to make that determination. I find this to be a moot point. The County, through Codas, found that MCDA met the requirements of the under-three-percent rule. SEIU further claims that Codas did not reach one of the under-three-percent issues, namely, whether the distinct community of interest made it unlikely that the dispatchers could receive adequate representation. While Codas testified that he did not "personally" come to that conclusion, that was his ultimate finding. He was simply explaining that it was not necessary to believe that himself and that the overwhelming sentiment reflected in the petition was sufficient; hence his characterization of accepting MCDA's petition "at face value." SEIU appears to make the latter point as a way of claiming that Codas knew he might be compromising the County's duty of neutrality if he granted the petition for registration.

By letter dated April 1, 2002, Honda responded to Katz regarding MCDA's petition. Honda stated that the County had registered MCDA as an official employee organization. His only statement in this regard was spare:

> First with respect to the registration of MCDA (Section IV D of the County of Monterey Employer Employee Relations Resolution), we find that the requirements have been met.

Addressing MCDA's request for processing of the petition with respect to recognition, Honda stated that such a petition could not proceed because of the EERR's contract bar provision.

Honda referred Katz to the EERR provisions regarding decertification and unit modification with respect to the request for severance.

A copy of the letter was forwarded to SEIU Executive Director John Vellardita. SEIU was not provided prior notice of the petition, nor was it offered an opportunity to state its position with respect to the matter.

After sending out the notification of registration, Codas conducted a more thorough analysis of the dispatchers' job duties, which included looking at job descriptions, consulting with other human relations managers, and contacting other jurisdictions. Codas learned from others within the County that prior to his employment with the County, probation officers had severed a unit from the SEIU unit.

The Park Rangers' Petition to Register MCPRA

The J Unit contains a series of classifications for park rangers.

By letter dated September 11, 2002, Katz submitted a petition to have MCPRA recognized as the exclusive representative for all "sworn Park Ranger employees." As with the MCDA petition, the purpose of the filing was two-fold: to register MCPRA, and petition for recognition of MCPRA as the exclusive representative for the park rangers.

The petition included a document entitled "Registration of Employee Organization." The registration petition acknowledged that the members of MCPRA do not comprise three percent of the total number of employees in permanent positions within the County; however, despite this, that park rangers are "peace officers" who have the right to be in a bargaining unit composed solely of peace officers. The petition indicated that MCPRA wished to be represented by COPS in its employment relations with the County.

Also attached to Katz's cover letter was a document entitled "Representation Petition/ Proof of Employee Approval." This document contained the names, job classifications, and signatures of County park rangers desiring to have MCPRA represent them. The signature petition included the signatures of 32 park rangers, or all but one of the total group. The sole exception was an employee who was on disability at the time the petition was circulated.

The signature petitions were separated according to non-supervisory park rangers and supervisory park rangers. Therefore, MCPRA sought to recognize, in fact, two separate bargaining units divided by supervisory and non-supervisory status. Katz states in his letter:

> Once the new unit is recognized, it is requested that an election be held to determine which organization will represent the bargaining unit. As illustrated by the number of names on the petitions, there is an overwhelming desire to establish the new unit and be represented by COPS.

Supervising Park Ranger Randy Korsgard is MCPRA's vice president. He has been sworn in as a peace officer and has the power to make arrests. Taking the peace officer's oath is a requirement for all of the park ranger positions. Penal Code section 830.31, subdivision (b), provides that a person is a peace officer with authority to effect an arrest if that person is "designated by a local agency as a park ranger and regularly employed and paid in that capacity, [and] if the primary duty of the officer is the protection of park and other property of the agency and preservation of the peace therein."[7]

The County's Processing of the Park Rangers' Petition

Honda assigned Codas the task of reviewing the park rangers' petition. Upon review of the petition and some additional investigation, Codas reported to Honda that the MCPRA

[7] Monterey County Ordinance, sections 14.12.120 and 14.12.160, of which I take judicial notice, describe duties of park rangers as including enforcement activities.

petition met the requirements for registration under the EERR. Section III, Paragraph B of the EERR provides that "peace officers as set forth in Penal Code Sections 830.1 and 830.3(b) shall be represented by an organization which is composed solely of such peace officers."[8] Codas based his recommendation on the reading of Sections IV(D) and III(B) of the EERR and Government Code section 3508.[9] Codas concluded that park rangers are peace officers and thus entitled to a separate bargaining unit.

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[8] Although the statutory citations in this 1978 ordinance do not conform to the language of current Penal Code section 830.31, subdivision (b), the discrepancy is immaterial, since they refer to the same chapter defining peace officers.

[9] Section 3508 provides, in pertinent part:

> (a) The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in these positions or classes of positions to form, join, or participate in employee organizations where it is in the public interest to do so. However, the governing body may not prohibit the right of its employees who are full-time "peace officers," as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of those peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.
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> . . . . . .
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> (d) The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section.

By letter dated September 24, 2002, Codas acknowledged receipt of the registration and recognition petition submitted by MCPRA. Codas wrote:

> To begin, we find the requirements for registering the MCPRA have been satisfied (Section IV D of the County of Monterey Employer-Employee Relations Resolution 78-303). Thus, the MCPRA is now registered as an official employee organization.
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> With respect to the representation petition, it is our position that the petition submitted is insufficient to initiate a representation election as described in your petition letter.... [We] acknowledge your stated position that the recognition petition as filed is sufficient. It is our position, however that the current petition needs to be supplemented with a de-certification petition. This is required based on the language of the County's Employer-Employee Resolution 78-303 and in recognition that the Service Employees International Union Local 817 is the current exclusive representative of the petitioning employee group.[[10]]

A copy of this letter was forwarded to Vellardita. Again, SEIU was not provided prior notice of the petition, nor was it offered an opportunity to state its position with respect to the matter.

SEIU attempted to establish that Honda contradicted the County's position that park rangers are peace officers (and thus entitled to a separate bargaining unit), citing an April 16, 2002, meeting held between SEIU and the County at which SEIU offered a proposal to grant park rangers enhanced retirement benefits, which are available only to peace officers. At this meeting, Honda balked at the proposal because he was not sure that the park rangers were peace officers. I do not find this constitutes evidence that the County acted unreasonably in later determining that the park rangers are peace officers for purposes of granting the

[10] SEIU asserts that Honda contradicted Codas when he testified that the under-three-percent rule was inapplicable to this petition because it was a moot point in light of the peace officer status of the park rangers. This inconsistency is of no consequence because Codas's letter to the County, explaining the County's rationale, is the operative act for purposes of this case.

registration request. Similarly, SEIU cited the fact that the County had earlier rebuffed an informal proposal by SEIU to sever park employees from the larger unit. Honda noted that SEIU's proposal was not limited to park rangers, and that he thought the proposed unit would not be appropriate. I do not find this to be evidence of favoritism toward MCPRA, because MCPRA's petition sought a unit composed only of park rangers. Furthermore, SEIU never filed a petition to modify its unit.

Honda had his staff research the enhanced retirement benefits, and it was reported that the relevant statute did not guarantee such benefits to park rangers. Determination of that issue was one to be made by the California Public Employees' Retirement System, not the County, in the staff's view. No further action was taken by the County to pursue the matter.

Purpose and Effect of Registration under the EERR

Under the terms of the EERR, registration is a prerequisite for seeking recognition as an exclusive representative. In other words, unless an employee organization is registered it may not invoke the procedures for filing a representation petition. In addition, Codas testified without contradiction that registration confers no other privileges or benefits on the employee organization. For example, registration does not confer any special rights to access or other organizational benefits that employee organizations dealing with the County would not otherwise have.

ISSUES

1. Did the County encourage employees to join MCDA in preference to SEIU by processing and granting MCDA's request for registration as an employee organization?

2. Did the County encourage employees to join MCPRA in preference to SEIU by processing and granting MCPRA's request for registration as an employee organization?

3. Did the County maintain an unreasonable rule permitting employee organizations to register prior to filing a proper representation petition and violate the MMBA by processing MCDA's and MCPRA's petitions?

CONCLUSIONS OF LAW

Domination and Assistance

Prior to PERB's acquisition of jurisdiction to enforce the MMBA, an employer's domination of, or provision of assistance to, an employee organization was not a specific violation of the MMBA. The MMBA contained no express language – and still contains no language – paralleling what is defined under the other PERB-administered statutes as an unfair practice (e.g., secs. 3519(d) [Ralph C. Dills Act], 3543.5(d) [Educational Employment Relations Act], 3571(d) [Higher Education Employer-Employee Relations Act]), or sec. 8(a)(2) of the National Labor Relations Act (NLRA) (29 U.S.C. 141 et seq.).[11] However, pursuant to its rulemaking authority, PERB adopted regulations, including PERB Regulation 32603(d), which defines the domination and assistance unfair practice, and now has authority to enforce such regulations pursuant to the Solis Act (Sen. Bill No. 739). (Sec. 3509.) In the absence of MMBA precedent, construing and applying the language of PERB Regulation 32603(d) should be guided by PERB precedent under the other acts it administers. (See Fire Fighters Union v. City of Vallejo, supra, 12 Cal.3d 608.)

In cases where two employee organizations are competing for the right to represent the same employees, there is a threshold test for determining whether the employer has unlawfully

[11] There are no reported cases adopting a theory that such conduct violates the MMBA. (But see Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507] [noting the construction of the jurisdictional strike language of Labor Code section 1117 in relation to the similar language of the NLRA's 8(a)(2) language]; see also State of California (Department of Transportation) (1983) PERB Decision No. 304-S [right of access implied].)

dominated or assisted. The test is "whether the employer's conduct tends to influence [free] choice or provide stimulus in one direction or the other." (Santa Monica Community College District (1979) PERB Decision No. 103 (Santa Monica).) Under this test, the employer's intent in taking the challenged actions is irrelevant. (Ibid.)

In Redwoods Community College District (1987) PERB Decision No. 650, PERB adopted the ALJ's formulation of this test as one requiring an examination of the "totality of the circumstances in each particular case," while noting that "the line between employer domination or interference, which . . . [the acts] prohibit, and mere cooperation, which . . . [the acts] permit, is often fuzzy."

Santa Monica is also a case often cited for the proposition that an employer owes a "duty of strict neutrality" in the face of competing organizational campaigns between two employee organizations. This principle has recently been affirmed in Santa Clarita Community College District (2003) PERB Decision No. 1506 (Santa Clarita). In Santa Clarita, a union had begun organizing previously unrepresented part-time faculty members. In the midst of the campaign, the exclusive representative of the full-time faculty members entered into an agreement with the employer to modify the full-time faculty unit so as to include part-timers. PERB held that the employer unlawfully provided assistance and encouraged employees to join the incumbent. In assessing whether the employer's action tended to influence employee choice, PERB considered how employees would view the employer's conduct vis'-a-vis' the competing employee organizations.

Santa Clarita relied on Long Beach Community College District (1998) PERB Decision No. 1278 (Long Beach). In Long Beach, the employer allowed an informational presentation by an employee organization seeking to decertify the incumbent by way of a severance

petition. PERB found that allowing the presentation, although not on official work time, constituted an unlawful grant of support to the challenging union because the meeting took place during a week-long, in-service training, was listed on the employer's official schedule, immediately followed a mandatory training session, and occurred one day before the incumbent became vulnerable to decertification.

SEIU, relying on Santa Monica, among other cases, contends that "[b]y saying that the independent associations met the criteria to be registered, the County was necessarily editorializing that the representation provided by [SEIU] was inadequate." SEIU further claims that, despite Codas's attempt to say the County was not making a determination as to the inadequacy of representation, by accepting the petitions at face value, "the County necessarily placed its imprimatur on those findings." Next, SEIU contends that the County violated its own EERR because, in effect, it failed to make findings necessary for the under-three-percent rule and failed to conduct an investigation in which SEIU had an opportunity to be heard.[12] Similarly, SEIU contends that the County failed to negotiate with SEIU prior to making a unit determination issue, citing Covina-Azusa Firefighters Union v. City of Azusa (1978) 81 Cal.App.3d 48 [146 Cal.Rptr. 155].[13]

[12] SEIU does not indicate whether this argument is raised as an independent violation or whether it simply signifies another aspect of the violation of neutrality. Since the complaint does not allege that the County violated its own employer-employee relations rules, and no motion was made to amend the complaint, I will not address this as an independent violation.

[13] Again, since no such allegation was contained in the complaint, and no motion to amend was made, I decline to determine the existence of an independent violation based on this theory.

The County contends that it in no way expressed a preference for MCDA or MCPRA simply by granting registration, under its lawful and reasonable EERR provisions. The petitions for registration could not have affected employee choice because those petitions were filed in advance of the County's decisions to register the employee organizations and they already showed nearly unanimous support. The County further contends that a domination and assistance violation cannot be found on the basis of a regulation that has been in existence, applied in the past to other registering employee organizations, and enforced here through a "benign, ministerial act." Moreover, the acts of registration conferred no rights on MCDA or MCPRA. As to the MCPRA petition, the County had no choice but to grant it because the MMBA requires granting separate bargaining unit status to units composed solely of peace officers, which include park rangers. As to the MCDA petition, the County steered a course of neutrality by refraining from making a subjective determination as to the adequacy or inadequacy of SEIU representation, and simply accepted the petition at face value, that is, as signifying unanimous disaffection by the dispatchers with SEIU representation.

The Dispatchers

The County's regulation did present its labor relations staff with a Hobson's choice in this case: it could either follow the dictates of a previously enacted regulation by making a determination as to the adequacy of the registration petition and face a potential unfair practice charge for domination and assistance from SEIU, or it could decline to follow the prescribed procedures and potentially violate its own regulation. Unfortunately for the County, attempting to steer a path of neutrality by following the regulation does not necessarily absolve it of liability. PERB is unconcerned with the intent of the employer and considers only whether its actions have a tendency objectively to influence free choice. (Santa Monica .)

That claim aside, it is necessary to determine whether the County's registration tended to influence employee free choice. The first question here is whether the County's action constituted a disparagement of the incumbent's representation, as SEIU contends. If not, the second question is whether it constituted a preference toward MCDA of any other sort. Subsumed within the first question is whether the April 1, 2002 letter, by its own words, constituted an expression of preference toward MCDA, or whether such meaning could be ascertained only by reference to the EERR.

I find that the County's letter granting registration to MCDA did not by its own words express a preference toward MCDA as opposed to SEIU. The letter simply stated the MCDA's petition fulfilled the requirements of Section IV(D). Only by reading the EERR would a typical employee understand the meaning or consequence of the County's act of registering. The mere act of registering is a benign act without reference to the EERR. An employee could only have known that the County made a presumptive finding of lack of community of interest by examining the language of the EERR and, specifically, Section IV(D).

Still, it is necessary to determine whether such an employee, who examined the EERR, would reasonably conclude that the County had expressed a preference toward MCDA, or, as SEIU describes it, editorialized in a negative way about the quality of SEIU's representation of the dispatchers. I find that the finding pursuant to the under-three-percent rule necessary for registration would not engender an understanding by a reasonable person that the County is expressing the view that the incumbent is providing poor representation. I base this on the precise language of Section IV(D), which itself expresses nothing with regard to the history of representation by the incumbent.

A close reading of the language indicates that the finding is to be made on the basis that the employees represented are "a unique group whose distinct community of interests" (emphasis added) render it "highly unlikely" that representation will be adequate. "Distinct community of interests" suggests traditional "community of interest" factors, as distinguished from the history of negotiations by the incumbent. (See Los Angeles Unified School District (1998) PERB Decision No. 1267 [analysis of unit proposed to be severed using community of interest, negotiations history, extent of organization, and efficiency of operations].) Codas's testimony suggests that he looked primarily to such "community of interest" factors as the dispatchers' job locations, duties, and reporting relationships.

Section IV(D) also does not expand on the definition of "community of interests." One must refer to Section VII ("Policy and Standards for Determination of Appropriate Units") for a reference to that phrase. Granted, one of the two major policy objectives there is: "providing employees with effective representation based on recognized community of interest considerations." But as noted above (fn. 6, above), Section VII lists seven factors, only one of which, "history of employee relations in the unit, among other employees in the County, and in similar public employment," even implicates SEIU's history of representing the disaffected dispatchers. Thus, even assuming Section IV(D) is referring to negotiations history, only a highly sophisticated student of labor relations would appreciate the possibility that the County was implicitly expressing agreement with MCDA's view that SEIU was providing inadequate representation based on a reading of these community of interest factors.[14] While it does

[14] Further, "negotiations history" could involve not just whether the incumbent has given enough effort in representing, but whether particular issues have arisen which place it in untenable conflicts rendering it difficult to adequately represent all members of the unit simultaneously.

appear that Codas may have been alluding to history of representation when he testified that he viewed the nearly unanimous proof of support as reflecting inadequacy of representation, the County never made that reasoning public. Moreover, even to the extent that it was appropriate for Codas to consider it, the level of support was simply, as he attempted to claim, an objective factor.[15] Hence there would be nothing in the County's letter granting registration that would permit an employee or MCDA to legitimately characterize the County's finding as one disparaging SEIU's representation,[16] and I reject SEIU's contention that the decision amounts to negative editorializing on the quality of its representation of the dispatchers.

Given this, the tendency to influence employee choice turns on a final question: whether the timing of the decision has a tendency to influence employee choice. SEIU argues that there is potential for the regulation to influence employee choice because granting registration pursuant to the under-three-percent rule is tantamount to a presumptive finding that SEIU's representation either is inadequate, or likely to be inadequate, based on the unit configuration and community of interest factors related to the classifications to be severed. This is a decision as to which SEIU has no opportunity for comment because the process is essentially an ex parte one. The County's position presumably is that an employee would be able to determine from a reading of the EERR that the registration finding is in the main a mere prerequisite to filing a subsequent representation petition, does not confer any other

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[15] In PERB's view, level of support is technically speaking an "extent of organization" factor, which is not identified by the EERR. (See Los Angeles Unified School District, supra, PERB Decision No. 1267.)

[16] Subsumed within the question whether a reasonable employee would construe registration as an expression of preference is whether an employee organization which republishes that statement to employees may be able to fairly characterize the finding in such a way as to convey the public agency's tacit or implicit agreement with any claim on its part as to inadequate representation by the incumbent.

rights or privileges, and may be reversed when the incumbent later challenges the appropriateness of the unit proposed to be severed.

I agree with SEIU that the County's tentative finding of lack of community of interest, without input from SEIU, requires SEIU to later argue back to the status quo, so to speak, when it subsequently does challenge the severance petition. (See Covina-Azusa Firefighters Union v. City of Azusa, supra, 81 Cal.App.3d 48 [prior notice of unit modification required].) In general, there is a tendency for even a tentative finding to compromise the neutrality of the decisionmaker because of the investment of factfinding and reasoning in the original decision. Is this sufficient to amount to an unlawful stimulus of support toward MCDA? I believe that it is.

PERB's most recent pronouncement on the duty of neutrality between competing employee organizations, Santa Clarita, is a particularly strong reaffirmation of the employer's duty, regardless of its knowledge of the relative levels of employee support enjoyed by the competing employee organizations. Santa Clarita relied heavily on Long Beach. As noted above, the employer in that case was found to have implicitly signaled its preference for a rival employee organization seeking to sever classifications from the incumbent's unit by allowing the rival to make a membership presentation at the end of a mandatory in-service training session for employees, and close in time to the commencement of the window period for decertification. Long Beach must be read as prohibiting an employer from any kind of action which can reasonably be construed as an expression of support for one of two competing employee organizations. The County's action in this case meets that test. The registration decision carries with it the message that given community of interest factors, analyzed by the County, it is "highly unlikely" that SEIU will be able to demonstrate that the unit proposed to

be severed is inappropriate. I would further note that nowhere does the EERR explicitly state that the community of interest finding associated with registration constitutes merely a tentative decision that can be reversed at the later juncture of the recognition petition. I read the provisions related to this matter to be somewhat ambiguous,[17] and clarification was only provided as a result of Codas's testimony in this hearing.

I find unpersuasive the County's argument that there can be no violation here because the petition had nearly unanimous support of the dispatchers, and hence there could have been no actual impact on employee choice. An incumbent faced with notice of registration by a challenging union would naturally seek to mount a counter-campaign to convince the employees that representation is adequate and that risks associated with severance are too great. Moreover, an employee's authorization has never been deemed irrevocable under public sector labor relations law. The County's initial determination will undermine SEIU's effort to mount a successful challenge to the appropriateness of MCDA's proposed unit by suggesting that it will be futile for any dispatcher to aid SEIU's presentation of a challenge.[18]

I therefore find that the County violated PERB Regulation 32603(d) by registering MCDA, with its presumptive unit determination, prior to the filing of proper decertification petition and opportunity for SEIU to be heard.

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[17] For example, Section IX does not appear to allow the incumbent to challenge the proposed unit as a matter of right, but requires a petition with proof of support.

[18] There is the residual concern as to why the County is required to register an employee organization prior to the window period when a decertification petition can be filed. As to this point, the County has provided no explanation, and I cannot independently ascertain one. The fact that both MCPRA and MCDA filed requests for recognition simultaneously with their request for registration and the fact that the EERR expressly permits such simultaneous filings is some evidence that little purpose is served by the advance act of registration.

The complaint alleges that the County's act of registering the MCDA also violated PERB Regulation 32603(a) and (b) and MMBA sections 3502, 3503 and 3506. There are no independent facts alleged indicating that these allegations suggest anything other than derivative violations based on the domination and assistance conduct. (See State of California (Department of Corrections) (2000) PERB Decision No. 1391-S .) I therefore find that the County violated PERB Regulation 32603(a) and (b) and sections 3502, 3503 and 3506 on this theory alone.

The Park Rangers

The same analysis I have applied to the MCDA petition is applicable to the MCPRA petition, with one significant qualification. I find that park rangers are peace officers. The park rangers in this case come within the definition of peace officers set forth in Penal Code section 630.31, subdivision (b). They are required to wear badges, have the authority to make arrests, and are sworn in as peace officers. As such, they are entitled to be placed in a separate bargaining unit. (Sec. 3508; Redondo Beach Police Officers Assn. v. City of Redondo Beach (1977) 68 Cal.App.3d 595 [137 Cal.Rptr. 384].)

I have already found that the registration decision, read in the context of the EERR, did not constitute any implied disparagement of SEIU's quality of representation. As in the MCDA case, the County's September 24, 2002, letter states nothing more than the fact that MCPRA has met the requirements for registration. I have also found that it was only the timing of the MCDA registration decision – in advance of an actual decertification petition – that had a tendency to influence employee choice. The remaining question is whether the registration of MCPRA would have a tendency to influence employee choice in light of the fact that the County is legally required to recognize a separate bargaining unit for the

petitioning peace officers. In other words, the contention that the granting of registration constitutes a presumptive finding is arguably rendered moot by the fact that there will be nothing SEIU can argue at the time a representation petition is filed to avert the result already announced. Because SEIU has no chance to reverse such a decision, in the limited circumstances of the park rangers' petition, the registration decision will have no practical impact on employee free choice. (See Muroc Unified School District (1978) PERB Decision No. 80 [de minimus harm avoids unfair practice finding].) I therefore find that the County did not violate PERB Regulation 32603(d) by registering MCPRA.

The complaint alleges that the County's act of registering the MCPRA also violated PERB Regulation 32603(a) and (b) and MMBA sections 3502, 3503 and 3506. Again, there are no independent facts alleged indicating that these allegations suggest anything other than derivative violations based on the domination and assistance conduct. Therefore, I find that the County did not violate PERB Regulation 32603(a) and (b) or MMBA sections 3502, 3503 and 3506.

Accordingly, the domination and assistance allegations as to the MCPRA registration are dismissed.

Unreasonable Regulation

Like the domination and assistance violation, the unfair practice predicated on the maintenance or enforcement of an "unreasonable regulation" did not exist prior to PERB's assumption of jurisdiction over the MMBA and the promulgation of regulations to implement that jurisdiction. Because this is a case of first impression with respect to an unfair practice based on the theory of an unreasonable regulation, it is necessary to formulate a test for the establishment of a prima facie violation.

The theory of the complaint is that the enforcement of an unreasonable regulation violates MMBA section 3507 and PERB Regulation 32603(f). Section 3507 is in the nature of a permissive grant of authority, i.e., to adopt a local rule that is "reasonable." Under the theory of an unreasonable regulation, a violation of section 3507 would necessarily arise by negative implication, that is, since only reasonable local rules are permitted, unreasonable local rules are impermissible. PERB Regulation 32603(f) makes this explicit and synthesizes the various statutory elements into a concise definition of the unfair practice: "[a]dopt or enforce a rule not in conformance" with lawful authority as defined by the MMBA. (See International Brotherhood of Electrical Workers v. City of Gridley (1983) 34 Cal.3d 191, 202 [193 Cal.Rptr. 518] [rules and regulations must not "frustrate the declared policies and purposes of the [MMBA]"]; Huntington Beach Police Officers' Assn. v. City of Huntington Beach (1976) 58 Cal.App.3d 492, 502 [129 Cal.Rptr. 893] [same]; see also Home Gardens Sanitary District v. City of Corona (2002) 96 Cal.App.4th 87, 94 [116 Cal.Rptr.2d 638] [citing rule that ordinance enacted through municipal police power may be nullified "if palpably unreasonable, arbitrary, or capricious"]; Harrahill v. City of Monrovia (2002) 104 Cal.App.4th 761, 767 [128 Cal.Rptr.2d 552] [discussing exercise of municipal police power through regulations imposing "reasonable requirements," or those which are in "aid and furtherance" of that power].)

A local rule that infringes on employee organization rights under section 3503 or employee rights under section 3506 would constitute an unreasonable regulation. Similarly, since all public agencies have an affirmative duty under MMBA to respect employee and employee organization rights in the actions they take, a local rule acting to restrict the performance of that duty would also constitute an unreasonable regulation. Accordingly, a violation based on the adoption or enforcement of an unreasonable regulation requires, as a

threshold matter, a showing that the local rule or regulation abridges the exercise of a fundamental right, or frustrates the fulfillment of an affirmative duty, prescribed by the MMBA.

I have found that the County's action in registering MCDA violated PERB Regulation 32603(a), (b), and (d) and MMBA sections 3502, 3503 and 3506. The County's action resulted from the application and/or enforcement of the under-three-percent rule in the EERR. The Section IV(D) regulation does not reasonably further the purposes of the MMBA because it has a tendency to influence employee free choice and there is no reason for a presumptive unit determination prior to the filing of a proper representation petition. The regulation also frustrates the public agency's duty of strict neutrality, implicitly embodied in the MMBA, and thereby infringes on employee and employee organization rights. The County has demonstrated no operational necessity for the regulation. (See Carlsbad Unified School District (1979) PERB Decision No. 89; Public Defenders' Organization v. County of Riverside (2003) 106 Cal.App.4th 1403, 1408, fn. 1 [132 Cal.Rptr.2d 81].)

I believe there can be only one possible defense to the charge, namely, that the regulation is only unreasonable as applied in these particular circumstances, as opposed to being unlawful on its face. I have found an instance where the rule is not unreasonable as applied. Therefore, I find that the regulation is only unreasonable to the extent that the registration constitutes a premature, tentative determination on the merits of the community of interest question, and the question cannot be found in favor of the registering employee organization as a matter of law. No violation based on the theory of an unreasonable regulation has been proven as to the MCPRA registration.

Accordingly, I find that the County has maintained and enforced an unreasonable regulation in violation of PERB Regulation 32603(f), and MMBA section 3507 as to the MCDA petition alone. The allegations in the complaint that the County also violated PERB Regulation 32603(a) and (b) and MMBA sections 3503 and 3506 are based on the identical conduct. Hence, the County violated these provisions on a derivative basis only. The allegations as to the MCPRA registration are hereby dismissed.

REMEDY

Pursuant to section 3509(a), the PERB under section 3541.3(i) is empowered to:

> . . . take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

The County has been found to have violated PERB Regulation 32603(d) when it registered MCDA pursuant to EERR, section V, paragraph D, while SEIU was the exclusive representative for the employees covered by MCDA's petition. Therefore it is appropriate to order that the County rescind its April 1, 2002, decision to register MCDA. (Antelope Valley Community College District (1979) PERB Decision No. 97; Rio Hondo Community College District (1983) PERB Decision No. 292; Mt. San Antonio Community College Dist. v. Public Employment Relations Bd. (1989) 210 Cal.App.3d 178, 189 [258 Cal.Rptr. 302].) I reject the County's argument, citing Pasadena Area Community College District (1990) PERB Order No. Ad-219, that undoing the registration amounts to "disestablishment" of MCDA.[19]

[19] This is not a case where there is any contention that the employer created or fostered the initial support for the "favored" employee organization (i.e., that MCDA would not exist but for unlawful support by the County). And there is no basis for claiming that "unregistering" MCDA will result in disestablishment. MCDA's ability to prepare for severance and decertification at the appropriate time is in no way hindered by the remedy imposed here.

The County has also been found to have violated PERB Regulation 32603(f) and MMBA section 3507 by maintaining and enforcing an unreasonable regulation, namely, Section IV, paragraph D of its EERR, with respect to the action taken on the MCDA petition for registration. Therefore, it is appropriate to order that the County cease and desist from maintaining and enforcing this regulation under the circumstances identified that led to the finding of an unfair practice here.

As a result of the above-described violations, the County has also interfered with the right of employees to participate in an employee organization of their own choosing in violation of MMBA sections 3502 and 3506, and PERB Regulation 32603(a). The County has also denied SEIU its right to represent employees in their employment relations with a public agency in violation of MMBA section 3503 and PERB Regulation 32603(b). The appropriate remedy is to cease and desist from such unlawful conduct. (Rio Hondo Community College District, supra, PERB Decision No. 292.)

Finally, it is the ordinary remedy in PERB cases that the party found to have committed an unfair practice be ordered to post a notice incorporating the terms of the order. Such an order ordinarily is granted to provide employees with a notice, signed by an authorized agent that the offending party has acted unlawfully, is being required to cease and desist from its unlawful activity, and will comply with the order. Thus, it is appropriate to order the County to post a notice incorporating the terms of the order herein at its offices and other facilities where J Unit employees are assigned. Posting of such notice effectuates the purposes of the MMBA that employees be informed of the resolution of this matter and the County's readiness to comply with the ordered remedy.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it has been found that the County of Monterey (County) violated the Meyers-Milias-Brown Act (Act), Government Code sections 3502, 3503, 3506, and 3507 and Public Employment Relations Board (PERB or Board) Regulations 32603(a), 32603(b), 32603(d), and 32603(f) (Cal. Code Regs., tit. 8, sec. 31001 et seq.), by registering the Monterey County Dispatchers' Association (MCDA) as an employee organization, maintaining and enforcing an unreasonable regulation as applied to MCDA's petition only, interfering with the right of County employees to participate in the activities of an employee organization of their own choosing, and denying the Service Employees International Union, Local 817 (SEIU) its right to represent employees in their employment relations with a public agency. All other allegations are hereby dismissed.

Pursuant to section 3509, subdivision (b) of the Government Code, it hereby is ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Enforcing the April 1, 2002, decision to register MCDA as an employee organization;

2. Contributing support to MCDA as a result of registering it;

3. Encouraging employees to join MCDA in preference to SEIU as a result of registering MCDA;

4. Maintaining and enforcing an unreasonable regulation as applied to MCDA's petition for registration;

5. Interfering with the right of County employees to participate in the activities of an employee organization of their own choosing; and

6. Denying SEIU its right to represent employees in their employment relations with a public agency.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Within ten (10) workdays of service of a final decision in this matter, rescind the findings contained in the April 1, 2002, letter that MCDA is a registered employee organization under the County's Employer-Employee Relations Resolution.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations at the County, where notices to employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that the County will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the San Francisco Regional Director of PERB in accord with the director's instructions.

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 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 95814-4174
FAX: (916) 327-7960

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, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 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, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 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. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Donn Ginoza
Administrative Law Judge