STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF GLENDALE, Employer, and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 18, Petitioner.	Case No. LA-BR-6-M Administrative Appeal PERB Order No. Ad-361-M April 13, 2007

Appearances: Liebert, Cassidy & Whitmore by Richard M. Kreisler, Attorney, for City of Glendale; Schwartz, Steinsapir, Dohrmann & Sommers by Robert M. Dohrmann, Attorney, for International Brotherhood of Electrical Workers, Local 18.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the International Brotherhood of Electrical Workers, Local 18 (IBEW) of a Board agent's decision to dismiss IBEW's petition for board review. The petition for board review, filed pursuant to PERB Regulation 60000,[1] seeks review of the City of

[1]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 60000(a) provides:

> Any party to a determination by a public agency concerning unit determination, representation, recognition or elections may file a petition requesting the Board review the determination. Such a petition may only be filed within 30 days following exhaustion of administrative remedies available under the applicable local rules. A challenge to the validity of a local rule may not be filed under this section and may only be filed as an unfair practice charge pursuant to Section 32602 of these regulations.

PERB Regulation 60000 was repealed on May 11, 2006. As this case was filed under Regulation 60000, the regulation is applied.

Glendale's (City) decision to deny IBEW's application to represent a separate unit of crafts workers. IBEW requests that PERB reverse the City's determination and find that the unit proposed by IBEW is appropriate.

The Board has reviewed the entire record in this case and hereby affirms the Board agent's dismissal of the petition for Board review.

BACKGROUND

On October 22, 2004, IBEW filed a petition for recognition with the City pursuant to the City's Employee Relations Ordinance (ERO).[2] IBEW sought to sever a unit of employees

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[2]Section 7 of Ordinance No. 3830 (as amended by Ordinance No. 3848) provides, in relevant part:

> (a) A petition for recognition as the representative of employees in an appropriate employee representation unit may be filed with the City Manager by an employee organization.
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> (b) In the determination of appropriate employee representation units, the following factors, among others, are to be considered:
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> (1) Which unit will assure employees the fullest freedom in the exercise of rights granted under this Ordinance;
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> (2) The community of interest of the employees;
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> (3) The history of employee relations in the unit;
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> (4) The effect of the unit on the efficient operation of the public service and sound employee relations;
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> (5) The effect on the existing classification structure of dividing a single classification among two or more units; and
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> (6) No unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.
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> (c) The City Manager shall determine the employee representation unit using the factors set forth in (b) above.

in electrical services and power plant classifications in the Department of Water and Power from a larger unit represented by the Glendale City Employees Association (GCEA).

On November 5, 2004, the City manager informed IBEW that the petition could not be processed until a unit appropriateness determination had been made pursuant to the ERO. IBEW concurred that a determination of an appropriate unit was the proper course of action. A hearing was conducted by the City manager on December 1, 2004. Representatives of IBEW, GCEA, the Glendale Management Association and individual employees spoke at the hearing, and documentary evidence was presented.

On January 13, 2005, the City manager issued a decision dismissing IBEW's petition for recognition. The City's decision addressed all six factors set forth in Ordinance No. 3830, section 7(b) (as amended), and concluded that the existing unit, which contained the requested job classifications, was an appropriate unit.

On February 2, 2005, IBEW filed a petition for board review. After considering the evidence submitted, the Board agent dismissed the petition on May 5, 2005.

POSITIONS OF THE PARTIES

On appeal, IBEW complains the Board agent did not specifically analyze each of IBEW's arguments in support of the proposed unit. IBEW asserts that it "amply demonstrated" that it is appropriate for the electrical crafts workers to be represented in a separate bargaining unit. Although IBEW contends the City misapplied the unit determination criteria, IBEW's appeal is virtually an identical recitation of the arguments it provided to the City manager in December 2004 on each of the six unit appropriateness factors.

The City asserts the Board agent reviewed the evidence presented and correctly found the City acted reasonably and in accordance with the Myers-Milias-Brown Act (MMBA),[3] ERO and applicable legal precedent. The City argues IBEW did not offer any evidence or legal argument that the Board agent erred in her decision to dismiss the petition for Board review. The City contends the Board agent endorsed the City's analysis of the unit determination factors by relying on the requirements in PERB regulations.

DISCUSSION

MMBA section 3507(a) authorizes public agencies to adopt rules for the administration of employer-employee relations, including the determination of "an appropriate unit." (MMBA sec. 3507(a)(4).) PERB Regulation 60000 allowed any party to a public agency unit determination to file a petition requesting the Board to review the determination. PERB's authority to review a public agency unit determination under the MMBA was guided by PERB Regulation 60010, which stated in relevant part:

> (b) The petition [for board review] shall be dismissed in part or in whole whenever the Board determines that:
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> . . . . . .
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> (2) The determination of the public agency was rendered in accordance with MMBA, the local rules of the public agency, and applicable precedent.

When evaluating the appropriateness of a unit determination under the MMBA, we must consider whether the public agency's determination is reasonable. (Alameda County Assistant Public Defenders Assn. v. County of Alameda (1973) 33 Cal.App.3d 825, 830 [109 Cal.Rptr. 392].) A local government employer does not need to determine "the *ultimate* unit or the *most* appropriate unit. The act requires only that the unit be 'appropriate.'

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

(Citations)." (Id., at p. 830, emphasis in original; Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara (1975) 51 Cal.App.3d 255, 260 [124 Cal.Rptr. 115] (Santa Clara.) PERB has also rejected a strict "most" appropriate unit standard under a similar labor statute. (Antioch Unified School District (1977) EERB[4] Decision No. 37.) The party challenging a unit determination decision carries the burden of demonstrating that the decision was not reasonable. (Organization of Deputy Sheriffs v. County of San Mateo (1975) 48 Cal.App.3d 331, 338 [122 Cal.Rptr. 210] (San Mateo); Santa Clara, at p. 265.)

IBEW contends the City erred in failing to recognize a unit consisting solely of skilled crafts classifications. However, the City is not mandated by the MMBA to recognize a separate unit of skilled crafts employees.[5] While the labor statutes governing state and university employees[6] provide a right to a separate unit of skilled crafts employees, the MMBA does not contain similar language.

The criteria set forth in the City's ERO to determine appropriate representation units are consistent with applicable legal precedent. In Santa Clara, supra, the court identified similar factors, including community of interest, authority to bargain effectively, and the effect of a unit on the efficient operation of the agency. The court also looked to factors considered by the National Labor Relations Board, addressing the desires of the employees, history of bargaining and public interest. (Santa Clara, at pp. 260-261; accord San Mateo, at p. 339.) Other labor statutes administered by PERB contain similar unit determination criteria. (See the

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

[5]Furthermore, IBEW's proposed unit included unskilled and semi-skilled crafts classifications.

[6]Ralph C. Dills Act (Dills Act) section 3521(b)(6); Higher Education Employer-Employee Relations Act (HEERA) section 3579(d).

Educational Employment Relations Act sec. 3545(a); Dills Act sec. 3521(b); HEERA sec. 3579(a).)

Applying the ERO factors, the City found: (1) No evidence of any bargaining disparity that deprived the specified classifications of the fullest freedom to exercise their rights; (2) A community of interest shared with classifications in the existing unit in uniform benefits and operation goals; (3) A positive history of employer-employee relations covering a 70-year period, evidencing a stable and productive historical relationship between the City and the classifications within the existing unit; (4) A new unit would require additional time to meet bargaining requirements and friction could result from similar classifications placed in different units, negatively impacting City operations; (5) The proposed unit could result in a fragmented workforce and adversely affect the classification structure and the City's efficiency of operations; and (6) The fact that some skilled crafts employees sought to be represented by IBEW was insufficient to support creation of a new unit.

IBEW has not met its burden with facts demonstrating that the City's determination was not reasonable. (Santa Clara, at p. 265.) IBEW does not provide evidence showing a lack of community interest with other classifications in the unit. It simply asserts that similar units in other cities have been effectively represented by IBEW. IBEW also points to a request by power plant personnel for a wage comparison study. As the City found, however, the study request did not demonstrate that the current exclusive representative is unable to adequately represent the interests of these employees. As such, IBEW has not demonstrated that the City's unit determination was unreasonable or violated the MMBA, local rules or applicable precedent.

ORDER

International Brotherhood of Electrical Workers, Local 18's petition for Board review in Case No. LA-BR-6-M is hereby DISMISSED.

Chairman Duncan and Member Shek joined in this Decision.