

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CITY OF VALLEJO,

Employer,

and

PUBLIC EMPLOYEES UNION, LOCAL ONE,

Petitioner,

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 2376,

Exclusive Representative.

Case No. SF-SV-119-M

Administrative Appeal

PERB Order No. Ad-399-M

April 12, 2013

Appearances: Renne, Sloan, Holtzman & Sakai by Genevieve Ng, Attorney, for City of Vallejo; Matthew Mason, Business Agent, for Public Employees Union, Local One.

Before Huguenin, Winslow and Banks, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from the attached dismissal by the Office of the General Counsel of a severance petition filed by the Public Employees Union, Local One (Local One) which sought to carve out a unit of Water Maintenance and Operations employees from the existing Maintenance and Operations unit.

After concluding that the local rules of the City of Vallejo (City) did not provide for severance petitions, the Office of the General Counsel applied PERB's rules concerning representation matters, including PERB Regulation 61400(b),<sup>1</sup> which requires severance

<sup>1</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

petitions to be filed within a “window period” as defined in the regulations.<sup>2</sup> The Office of the General Counsel determined that the severance petition was filed one day after the window period closed and that the petition was also deficient because it was not accompanied by a proof of support as required by PERB Regulation 61210(b). For both of these reasons the Office of the General Counsel dismissed Local One’s petition.

In its appeal, Local One claims that the petition was not untimely because it was mailed on the last day of the window period.

The Board has reviewed the dismissal letter and the record in light of Local One’s appeal and relevant law. Based on this review, we find the Office of the General Counsel’s dismissal to be well-reasoned, adequately supported by the record, and in accordance with applicable law. Accordingly, the Board adopts the dismissal letter as the decision of the Board itself.

#### DISCUSSION

In response to Local One’s appeal, the City asserts that the appeal was not timely filed. We reject this claim for the following reasons.

The dismissal letter was served on the parties November 5, 2012. It informed the parties that an appeal to the Board itself may be made within 10 days of the date of service of this decision. The dismissal letter also described when a document is considered “filed” at PERB, and the definition of “service” within the meaning of PERB Regulation 32135(c).

Local One sought and was granted a two-week extension within which to file its appeal, making the new due date November 30, 2012. The letter granting the extension was sent by

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<sup>2</sup> PERB Regulation 61000 provides in pertinent part: “the Board will conduct representation proceedings . . . under MMBA [Meyers-Milias-Brown Act] in accordance with the applicable provisions of this Chapter only where a public agency has not adopted local rules in accordance with MMBA section 3507.” (MMBA is codified at Government Code section 3500 et seq.)

United States mail. PERB's files show that the appeal was filed by facsimile on December 4, 2012. A proof of service was also filed on December 5, 2012 showing service of the appeal on December 4, 2012. Because PERB has consistently applied PERB Regulation 32130(c) to appeals filed by parties who have been granted an extension of time within which to file the appeal, Local One's appeal was due on December 5, 2012.<sup>3</sup> (*Los Angeles County Office of Education* (2005) PERB Decision No. 1743; *State of California (State Personnel Board)* (2004) PERB Order No. Ad-343-S.) Documents are considered filed "when received during a regular PERB business day by facsimile transmission at the appropriate PERB office." (PERB Regulation 32135(b).) Thus, the appeal was timely filed. We nevertheless dismiss the appeal on the merits for reasons discussed in the dismissal letter.

#### ORDER

The appeal in Case No. SF-SV-119-M by the Public Employees Union, Local One is hereby DENIED.

Members Huguenin and Banks joined in this Decision.

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<sup>3</sup> PERB Regulation 32130(c) provides, in pertinent part:

"A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California .... No extension of time applies in the case of documents served in person, or by facsimile transmission."



## PUBLIC EMPLOYMENT RELATIONS BOARD



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Oakland, CA 94612-2514  
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Fax: (510) 622-1027



November 5, 2012

Matthew Mason, Business Agent  
Public Employees Union, Local 1  
P. O. Box 6783  
Concord, CA 94524-1783

Re: Case No. SF-SV-119-M  
City Of Vallejo

Dear Mr. Mason:

The above-referenced severance petition was filed with the Public Employment Relations Board (PERB or Board) on October 2, 2012 by the Public Employees Union, Local 1 (PEU or Petitioner). The petition seeks to sever a Water Maintenance and Operations unit at the City of Vallejo (City) from the existing Maintenance and Operations unit represented by the International Brotherhood of Electrical Workers, Local 2376 (IBEW or Exclusive Representative).

On October 12, 2012, the City provided to PERB a copy of its employer-employee relations resolution. On October 15, 2012, the undersigned determined that the City has not adopted local rules providing a severance process pursuant to MMBA section 3507,<sup>1</sup> and that, pursuant to PERB Regulation 61000,<sup>2</sup> PERB will conduct representation proceedings in the above-referenced matter. (*County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M.)

PERB Has Authority to Conduct Representation Proceedings

On October 22, 2012, IBEW requested "reconsideration" of the determination that the City has not adopted local rules providing a severance process. IBEW states that, "there have been instances in the past in which groups of employees have been severed from existing bargaining units including, in particular, the severance in 1986 of uniformed fire department employees in the classifications of Assistant Fire Chief and Battalion Fire Chief from a unit formerly consisting of all uniformed fire department employees."

<sup>1</sup> The MMBA is codified at Government Code section 3500 et seq. Unless otherwise specified, all statutory references herein are to the Government Code.

<sup>2</sup> PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

No party has alleged what specific sections of the City's employer-employee relations resolution provide for a severance process. Section 2.b of the resolution, as originally adopted on January 13, 1969, states that "The representational units of employees shall be: 1) Uniformed Police Department employees; 2) Uniformed Fire Department employees; and 3) Miscellaneous employees." No provision is made to modify those defined representational units.

The City's employer-employee resolution has been amended several times subsequent to its initial promulgation. On December 23, 1986, section 2.b of the resolution was amended to read, "The representational units of employees shall be: 1) Uniformed Police Department employees; 2) Uniformed Fire Department employees; 3) Miscellaneous employees; and 4) Uniformed fire department employees in the classifications of Assistant Fire Chief and Battalion Fire Chief." Section 2.b was amended again on December 10, 1991 to create a fifth bargaining unit, defined as:

All unclassified employees with the exception of: offices required by the City Charter to be filled by election or appointment by the City Council; the heads of the separate departments; one assistant and one secretary to the City Manager; one secretary to the mayor; one analyst within the Human Resources Department; one attorney assistant to the City Attorney who shall either be included or excluded from this representational unit at the election of the City Attorney during the term of any memorandum of understanding between the City of Vallejo and any employee organization recognized as the exclusive representative of this unit; part-time employees who are regularly employed for less than one-third time throughout the year, or who are employed on a seasonal employment for not more than 90 days in any consecutive 12 months; those engaged by contract for special services.

PERB has held that both the plain language of MMBA section 3509 and legislative intent behind that section are clear that PERB regulations serve to "fill in the gap" when a local agency has not adopted a local rule on a particular representation issue. (*County of Siskiyou/Siskiyou County Superior Court, supra*, PERB Decision No. 2113-M.) Therefore, PERB regulations will apply in the instant case if the City has not adopted a local rule that provides a process for severance.

Although the established bargaining units of the City's employees have changed several times since 1969, it does not appear that this was done via a process within the City's employer-employee relations resolution. The practice appears rather to have been to modify existing bargaining units by resolution of the City Council on an ad-hoc basis. Because each version of section 2.b of the resolution specifies and limits the appropriate bargaining units of City employees, each subsequent change in composition in these units had to be done through an amendment to the resolution itself. This very fact supports the conclusion that the City has not adopted a local rule that provides a severance process.

Finally, section 2.e of the City's employer-employee resolution, as amended, states in relevant part, "Each employee representational unit shall be represented by no more than one formally recognized employee organization." This section would appear to bar a petition by an employee organization to represent a group of employees within any of the units defined at section 2.b, if those employees are currently represented by a different employee organization. In other words, section 2.e appears to bar severance petitions.

For these reasons, it is concluded that pursuant to PERB regulation 61000, PERB will conduct representation proceedings in the above-referenced matter. (*County of Siskiyou/Siskiyou County Superior Court, supra*, PERB Decision No. 2113-M.)

#### The Petition is Untimely

Because of the foregoing, PERB regulations on the filing of a severance petition under MMBA apply. (*County of Siskiyou/Siskiyou County Superior Court, supra*, PERB Decision No. 2113-M.) PERB regulation 61400(b) states, "Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the 'window period' defined by Section 61010." PERB Regulation 61010 states that the window period is:

the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

PERB strictly enforces the window period. (*Alum Rock Union Elementary School District* (1996) PERB Order No. Ad-280.)

A severance petition must also be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. PERB regulation 61400(a) states, in relevant part:

An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Chapter.

The reference to Article 3 includes PERB Regulation 61210(b), which states:

The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 61020 of these regulations.

Deficiencies in proof of support may not be cured by a filing after the close of the window period. (*State of California (Department of Personnel Administration)* (1983) PERB Decision No. 327-S.)

The circumstances of the instant petition are as follows. The Exclusive Representative and the City are parties to a collective bargaining agreement which expires December 31, 2012. The window period for filing a severance petition as to a group of employees in the bargaining unit covered by that collective bargaining agreement was therefore September 3, 2012 through October 1, 2012.

The instant petition was filed in PERB's San Francisco Regional Office on October 2, 2012, one day outside the window period. The petition was not accompanied by any proof of support. Attached to the petition was a cover letter, stating in part that "[Petitioner has] in our possession a petition that well exceeds the required 30 percent of signatures needed to sever and modify the proposed unit under PERB regulation 61400 and we request state mediation to certify those signatures so we can move forward with an election." Proof of support was ultimately filed with PERB on October 15, 2012.

The petition must be dismissed for two separate but independently sufficient reasons. First, the petition was filed the day after the close of the window period as defined at PERB Regulation 61010. PERB strictly enforces the window period requirement. (*Alum Rock Union Elementary School District, supra*, PERB Order No. Ad-280.) Therefore, the petition was not filed in accordance with PERB Regulation 61400(b) and must be dismissed.

Second, the petition lacks proof of support. As noted above, proof of support for the petition was filed with PERB on October 15, 2012, after the close of the window period. PERB Regulations 61400(a) and 61210(b) require that a severance petition be accompanied by proof of support. Even if the petition had been timely filed, deficiencies in the proof of support were not corrected until well after the close of the window period. For this reason, the petition must be dismissed. (*State of California (Department of Personnel Administration), supra*, PERB Decision No. 327-S.)

For the foregoing 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. (PERB Regulation 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. (PERB Regulations 32135(a) and 32130; see also 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. (PERB Regulation 32135(b), (c) and (d); see also PERB Regulations 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 (PERB Regulation 32360(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 (PERB Regulation 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 (PERB Regulation 32375).

#### Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see PERB Regulation 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. (PERB Regulation 32135(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 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 (PERB Regulation 32132).

Sincerely,

Daniel Trump  
Regional Attorney

DT

cc: Genevieve Ng, Attorney  
Duane Reno, Attorney