STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Charging Party, v. COUNTY OF AMADOR, Respondent.	Case No. SA-CE-809-M PERB Decision No. 2318-M July 12, 2013
AMADOR COUNTY EMPLOYEES ASSOCIATION, Joined Party.	

Appearances: Weinberg, Roger & Rosenfeld by Matthew J. Gauger, Attorney, for Service Employees International Union, Local 1021; Gregory G. Gillott, County Counsel, for County of Amador; Rose Law by Joseph W. Rose, Attorney, for Amador County Employees Association.

Before Martinez, Chair; Huguenin and Winslow Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Amador (County) and joined party, the Amador County Employees Association (ACEA) to the administrative law judge's (ALJ) proposed decision (attached) invalidating a section of the County's local Employment Relations Policy (ERP) concerning the timing for the filing of decertification petitions.

The complaint alleged that the County maintained an unlawful local rule in violation of the Meyers-Milias-Brown Act (MMBA)[1] when it voted to move forward with the processing of

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

a decertification petition filed by the ACEA seeking to decertify the incumbent exclusive representative, Service Employees International Union, Local 1021 (Local 1021). The ALJ determined that the local ERP, which permitted decertification petitions only within a twelve-month period after certification by the County of a recognized employee organization, was contrary to section 3705(b) of the MMBA.[2] Having so concluded, the ALJ ordered the County to remove the illegal rule from its ERP and adhere to PERB regulations regarding decertification/certification "until it amends its own timing provisions consistent with ERP section 24, the MBA and PERB precedent." (Proposed Dec., at p. 17.) The relevant PERB regulation contains a contract bar provision and a window period, to which the County and ACEA object.

We have reviewed the record and the proposed decision in light of appeals by the County and ACEA,[3] Local 1021's response thereto, and relevant law. Based on the review, we affirm the proposed decision in accordance with the following discussion.

FACTUAL SUMMARY

The facts in this case are not in dispute. We therefore adopt the ALJ's findings of facts as our own and briefly summarize them.

---

[2] MMBA section 3507(b) provides: "Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition." (Emphasis added.)

[3] The ACEA requests oral argument pursuant to PERB Regulation 32315. Historically, the Board has denied requests for oral argument when an adequate record has been prepared, the parties had ample opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear to make oral argument unnecessary. (*United Teachers of Los Angeles (Valadez, et al.)* (2001) PERB Decision No. 1453; *City of Modesto* (2008) PERB Decision No. 1994-M.) Based on our review of the record, all of the above criteria are met in this case. Therefore, the Board denies the request.

Local 1021 has been the exclusive representative of employees in the County's General Employee Representation Unit (General Unit) since at least 2007. The memorandum of understanding (MOU) between Local 1021 and the County is for a three-year term, expiring on September 30, 2013. On September 21, 2012, the ACEA presented the County with a decertification petition for the General Unit represented by Local 1021, pursuant to section 18 of the ERP. The petition was accompanied by a showing of more than 30 percent support from unit members. Section 18 provides, in pertinent part:

> a. A certification by the Board of a recognized employee organization of a representation unit shall continue in effect until such recognized employee organization is decertified with respect to said unit.
>
> b. Following the determination of the Board of an appropriate representation unit and certification of a recognized employee organization of such unit . . . no petition for certification as an exclusively recognized employee organization of such unit, or portion thereof, shall be filed with or received by the Board except during the twelve months ensuing from the date of such certification.

(Emphasis added.)

Also relevant here is Section 19(a) of the ERP which provides, in pertinent part:

> a. Subject to the provisions of Section 18 of this Policy, employees in a representation unit for which there is a recognized employee organization may file with the Board a decertification petition.

Recognizing that section 18(b) could, when read literally in conjunction with MMBA section 3507, "bar every employee organization in the County from ever having their exclusive status revoked," the ACEA asked the County to interpret section 18(b) to conform with the MMBA, grant the ACEA's request for an election, and "reform the last sentence of section 18, subdivision (b) . . . to conform to the MMBA by applying it without the word 'except.'"

The county counsel recognized the same defect in section 18(b) and informed the County Board of Supervisors that the certification bar would not likely survive a legal challenge. He presented two options: (1) to deem the certification bar void and unenforceable, apply the certification bar in section 3507(b) of the MMBA, and call for an election; (2) determine that PERB's regulations apply, including the contract bar contained in PERB Regulation 61200.[4]

On October 9, 2012, the County voted to "move forward with the request by [ACEA] to call for an election regarding the possible decertification of [Local 1021]." Nothing in the record indicates that the County followed either of the options presented to it by the county counsel.

The ERP contains no rule incorporating any contract bar, i.e., a regulation that permits a decertification petition to be filed only within a specified period prior to the expiration of a MOU.

Local 1021 filed the instant charge on October 8, 2012 in anticipation of the County's vote the following day.

PROPOSED DECISION

All parties in this case agree that ERP section 18(b) is in direct conflict with MMBA section 3507(b), and the ALJ ruled that it could not be enforced. Having done so, he then reasoned that in the absence of section 18(b), there would be no time component in the ERP directing parties when a decertification petition could be filed. Therefore, ERP section 19(a), which concerns the filing of decertification petitions, is devoid of any direction as to when decertification petitions can be filed because it refers back to the invalid section 18(b).

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

Relying on *County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M (*County of Siskiyou)* and *County of Orange* (2010) PERB Decision No. 2138-M (*County of Orange*), the ALJ concluded that PERB regulations apply only when an agency has no rule that governs a particular representation issue. Because section 18(b) is invalid, PERB Regulations 61010, 61200, and 61380 "must be applied or substituted to provide the timing requirement. If the Board of Supervisors later desires to change its ERP to reflect its own timing requirement, pursuant to MMBA section 3507 . . . it is free to do so, barring any other MMBA and case law restrictions." (Proposed Dec., at p. 14.)

The ALJ also rejected the County and ACEA's claim that the word "except" in section 18(b) was a typographical error and that the October 9, 2012 vote to proceed with the decertification election was a valid exercise of the County's administrative authority to interpret section 18(b) to correct its defect. There was no evidence that the inclusion of "except" was a typographical error. It is illogical to "interpret" a regulation to mean the opposite of its literal meaning, according to the ALJ. To do so is a de facto amendment to the regulation without complying with the requirement of MMBA section 3507(a) to consult in good faith with employee organizations concerning these regulations.

The ALJ concluded that by calling for an election instead of considering ERP section 18(b) violative of the MMBA, and thereafter refusing to apply PERB Regulations 61010, 61200, and 61380 as its local rule, the County violated the MMBA and PERB Regulation 32603(a), (b), (f), and (g).

As a remedy, the ALJ ordered the County to rescind its October 9, 2012, Board of Supervisors action to "move forward with ACEA's call for an election to decertify Local 1021" and to remove section 18(b) in its entirety from the ERP. The County was ordered to cease and desist from applying any other timing component to its

decertification/certification process other than that contained in PERB regulations until it amends its own timing provisions.

POSITIONS OF THE PARTIES

Both the County and ACEA except to the proposed decision, asserting that the ALJ erred in imposing PERB's regulations establishing a contract bar and window period when he could have simply replaced ERP section 18(b) with the MMBA section 3507(b). According to the County and ACEA, the ALJ's order to "fill the gap" in the ERP with PERB's regulations was unnecessarily overbroad.

Because the County made a conscious choice not to incorporate the contract bar doctrine in its local rules, PERB cannot, according to the County, impose the doctrine under the guise of its authority to "adopt rules to apply in areas where the public agency has no rule." (MMBA section 3509.) The County cites long-standing precedent from both the courts and PERB itself in support of its view that neither courts nor PERB has the authority to apply a contract bar rule on a local agency where the agency has none. (*Service Employees Internat. Union v. City of Santa Barbara* (1981) 125 Cal.App.3d 459 (*Santa Barbara*); *City of San Rafael* (2004) PERB Decision No. 1698-M.) In the County's view, by "exclusion of a contract bar, it must be presumed that the County gave increased preference to the employees' right to freely select their representation over the stability in labor relations gained by the contract bar." (County's Brief In Support of Exceptions, at p. 5.)

Local 1021 urges PERB to affirm the proposed decision. The ALJ was correct in ruling that the County should have applied PERB's contract bar regulation because ERP section 18(b) was illegal on its face. There was no evidence that the word "except" was a typographical error. Therefore, the ALJ was required to invalidate section 18(b). In the absence of any time component for the filing of a decertification petition, the only choice available to the ALJ was

to substitute PERB's regulations on certification and decertification which contain the contract bar doctrine. Because PERB's certification bar and contract bar rules "work in concert in support of the policy of stability and fairness in labor relations" the ALJ appropriately filled the local regulatory "gap" with PERB Regulations 61010, 61200 and 61330(c), according to Local 1021.

DISCUSSION

At issue in this case is the scope of PERB's "gap-filling" authority to impose a contract bar where the local agency has chosen not to adopt such a policy. Unlike other statutes administered by PERB, neither the MMBA nor the County's local rules contain a contract bar.[5] PERB Regulation 61200 contains both a certification bar and a contract bar.

In 2003, the MMBA was amended to give PERB the authority to "adopt rules to apply in areas where a public agency has no rule." (MMBA § 3509(a).)[6] In *County of Siskiyou,* PERB held that based on the plain language of section 3509(a) and the legislative history of the 2003 amendment, "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*, at p. 17.) However, this begs the question: what should be done when the "gap" was a legitimate policy choice of the local agency where, as here, the agency determines that the contract bar doctrine

[5] The Educational Employment Relations Act (EERA), codified at Government Code section 3540 et seq., provides for a contract bar in sections 3244.1(c), 3244.7(b)(1). The Higher Education Employer-Employee Relations Act (HEERA), codified at Government Code section 3560 et seq., provides for a contract bar in sections 3574(c), 3577(b)(1). Transit Employer-Employee Relations Act codified at Public Utilities Code section 99560, provide for a contract bar at section 99564.1(c).

[6] PERB Regulation 61000, as adopted after the 2003 statutory amendment reads, in pertinent part: "the Board will conduct representation proceedings . . . under the MMBA 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."

should not be incorporated into the local rules? The "gap" in the County's ERP was not inadvertent.

PERB has considered its "gap-filling" authority with varying results. In *County of Siskiyou,* after determining that the local rules were silent concerning amendment of certification, PERB applied regulations and case law concerning amendment of certification, and dismissed the petition to amend, concluding that the petitioning party did not prove the element of continuity of organizational identity.

In *County of Orange*, the Board declined to apply its regulation where the local agency denied a severance petition. Local rules did not provide for severance, although they did permit unit modifications petitions, but only those filed by either a verified employee organization or by an exclusive representative. Because the organization seeking to represent the severed employees was neither verified nor an exclusive representative, the county denied the petition. The local rules also required a showing of 50 percent support to accompany a unit modification petition.

PERB upheld the county's application of its local rules, refusing to substitute PERB regulations. The Board noted, "The absence of an explicit local representation rule does not mean . . . that PERB regulations necessarily apply. Rather, PERB regulations will apply only when the agency's local rules contain no provision that can accomplish what the petitioner is seeking without placing an undue burden on the petitioner." (*County of Orange,* at p. 9.) Even though the local rule did not explicitly provide for a severance procedure, and even though it differed from PERB's severance rule by requiring a 50 percent showing of support instead of a 30 percent showing, the Board determined that these differences did not render the local rule unreasonable. Nor did it prevent the petitioner from accomplishing its goal. In "examining whether a local agency rule . . . is reasonable, PERB's inquiry is not whether a different rule

would be more reasonable or whether the rule is reasonable when measured against an arbitrary standard. Rather, the question is whether the rule "is consistent with and effectuates the purposes of the express provisions of the MMBA." (*County of Orange,* at p. 11, citations omitted.) Because PERB regulations governing severance under EERA, HEERA and the Dills Act[7] require a showing of majority support among employees in the proposed new unit, the County's 50 percent requirement was not contrary to the MMBA.

PERB again declined to apply its regulations in *County of Riverside* (2011) PERB Decision No. 2163-M (*County of Riverside*), where the county denied a unit modification because it was not accompanied by a proof of majority support of the employees sought to be added. The local rules included provisions for unit modification, but did not require any showing of support among the employees sought to be added.

The county urged PERB to imply a majority-support requirement to prevent employees from "being unionized against their will." PERB declined to imply a majority support requirement and also declined to apply PERB Regulation 61450(e)(1), PERB's rule requiring a showing of support in unit modification petitions only when the group to be added exceeds 10 percent of the existing unit. "Gap-filling" with PERB rules is appropriate "only when the agency has no rule at all that governs a representation issue." (*County of Riverside*, at p. 4.) Since the County did have a rule regarding unit modification, PERB would not alter it or add to it by requiring a showing of support. The Board noted that MMBA section 3507(a) gives local agencies the ability to amend its rule "after consultation in good faith with" employee representatives, and the County cannot add to its rules without participating in the statutorily required consultation. Nor may PERB re-write local rules, even if the agency urges it to do so.

[7] The Dills Act is codified at Government Code section 3512 et seq.

The County argues that *City of San Rafael* (2004) PERB Decision No. 1698-M (*San Rafael*) controls here and requires PERB to set aside the proposed decision. We believe this case is distinguishable from *San Rafael*, but acknowledge that this prior decision dictates caution in imposing a contract bar where there is none in local rules. In *San Rafael,* the Board rejected the union's contention that the local rules violated MMBA because they did not provide a contract bar. PERB's decision relied on *Santa Barbara*, which declined to read into the MMBA a contract bar requirement. The court noted that the Legislature had applied a statutory contract bar in other statutes, in varying durations. From this, the court concluded:

> From this differential treatment, we discern that the Legislature has tailored the contract bar doctrine to fit the particular needs of each area of labor relations. The time periods selected represent the result of legislative balancing of the potentially conflicting purposes of the Government code (sec. 3500), the employees' rights to free association on the one hand and the need for a stable bargaining atmosphere on the other.

For this reason, the Board in *San Rafael* warned: "the Board's authority to adopt regulations and issue decisional authority in the face of silence in a statute must be exercised with caution." Because the union provided no rationale to deviate from *Santa Barbara*, PERB dismissed the unfair practice charge, refusing to insert a contract bar into a local ordinance where none existed.

We do not read *San Rafael* or *Santa Barbara* as forever precluding PERB from substituting its certification and decertification rules to fill the gap left by patently illegal rules promulgated by local agencies, or where none exist. Rather, it stands for the principle that neither the MMBA nor PERB regulations require local entities to adopt the contract bar doctrine, and that PERB should proceed with caution in imposing a contract bar rule where local entities have declined to do so.

Where, as here, the local rule that purports to establish the timing for the filing of a decertification petition is directly contrary to the MMBA, PERB has no choice but to replace the illegal rule with its own regulation on that subject. Unlike the local rules in *County of Orange* and *County of Riverside*, there is no provision in the local rules here that can accomplish what the petitioner seeks after section 18(b) is deleted. There is no dispute that the County's certification bar rule, ERP section 18(b), was invalid because it would prohibit decertification petitions unless they were filed within twelve months of certification. ERP section 19(a) is the County's decertification rule. It is inextricably linked to section 18(b): "Subject to the provisions of Section 18 of this Policy, employees . . . may file with the Board a decertification petition".

Section 18(b) is invalid because it creates the opposite of what the MMBA provides by requiring, rather than prohibiting, decertification petitions to be filed only within twelve months of certification. The purpose of MMBA section 3507 is to create labor stability of at least one year after an organization is recognized as the bargaining agent for employees of an appropriate unit.

With this section excised, the ERP has no regulation establishing a certification bar as required by MMBA section 3507. Nor does the ERP have a rule dictating when decertification petitions can be filed. Therefore, it was appropriate for PERB to substitute its Regulation 61200, Bar to Conducting Election. This regulation contains both the contract bar and certification bar doctrine.[8] It also requires that a decertification petition be filed within a

[8] PERB Regulation 61200 provides:

> The Board shall dismiss a petition requiring a representation election if it determines (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the

defined "window period" if there is an MOU in effect with a term of three years or less. The ALJ also correctly applied PERB Regulations 61380 and 61010, both of which also define the contract bar and window period, respectively.

PERB precedent makes clear that PERB's "gap-filling" does not extend to revising or amending local rules, even if the local entity requests us to do so. (*County of Riverside.*) For this reason, we reject the County's argument that we should amend ERP section 18(b) to conform to MMBA section 3507(b). Two policy considerations inform our conclusion. First, as the ALJ and our precedent have noted, the County is free to amend its ERP at any time. It could have done so upon being placed on notice of the infirmity of section 18(b). Second, PERB will not impliedly revise local rules, because the MMBA requires that such revision or adoption occur after the employer's consultation in good faith with its employee organizations. (MMBA section 3507(a).) Permitting amendment by PERB order would allow the employer to avoid its obligation under MMBA section 3507(a), an outcome obviously contrary to law. For this reason we also reject the County's argument that it should be allowed to administratively interpret ERP section 18(b) to conform to the MMBA.

The County also urges PERB to "fill the gap" with MMBA section 3507(b), instead of our regulations. We decline this invitation as well. The plain meaning of MMBA section 3509(a) vests PERB with the authority to "adopt rules to apply in areas where a public agency has no rule." (Emphasis added.) Our rules are contained in PERB Regulation 61200,

---

> exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration of such memorandum, provided that if a memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

and that is what fills the gap in this case until and unless the county revises its local rules. The County itself could have decreed that MMBA section 3507 applies to its certification and decertification procedure by adopting a proper rule. Indeed it may still do so, subject to the good faith consultation duty of MMBA section 3507(a).

We are mindful that the County's ERP does not contain a contract bar, which is a legitimate policy choice. However, the fact that PERB orders PERB Regulations 61200, 61010, and 61380 to supply the time frame for filing decertification petitions in this case does not prevent the County from correcting ERP section 18(b). Doing so would establish a regulatory scheme that bars decertification petitions for the period of twelve months following initial certification of an exclusive representative, but permits decertification petitions any time after that period. Our decision does not impose PERB's contract bar and window period any longer than it takes for the County to amend its own ERP after consulting in good faith with its employee organizations before making the desired changes.

We affirm the proposed decision and proposed remedy.

ORDER

Based on the findings of fact and conclusions of law and the entire record in this matter, the Public Employment Relations Board (PERB or Board) finds that the County of Amador (County) violated the Meyers-Milias-Brown Act (MMBA) sections 3503, 3506, 3506.5(a) and (b), 3507 and 3509(b) and PERB Regulation 32603(a), (b), (f), and (g), by failing to apply the appropriate local rule (PERB Regs. 61010, 61200, and 61380) by taking board action to move forward with the Amador County Employees Association's (ACEA) call for an election to decertify Service Employees International Union, Local 1021 (Local 1021) as the exclusive representative of the County's General Employee Representation Unit (General Unit) and verify the number of signatures received.

Pursuant to section 3509(b) of the MMBA, it is hereby ORDERED that the County, its governing council and its representatives shall:

A. CEASE AND DESIST FROM:

1. Applying any other timing restrictions for the filing of decertification/ certification petitions other than the PERB regulations until it amends its own timing provisions consistent with Employment Relations Policy (ERP) section 24, the MMBA and PERB precedent.

2. Interfering with the right of employees to be represented by the exclusive representative.

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

1. The County will rescind its October 9, 2012 Board of Supervisors action to move forward with the ACEA's call for an election to decertify Local 1021 as the exclusive representative of the General Unit and verify the number of signatures received.

2. Remove section 18(b) from the ERP.

3. Within (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the County's General Unit 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 it will comply with the terms of the 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.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB or the General Counsel's designee. The County shall provide reports, in writing, as directed by the General Counsel or her designee. All reports regarding compliance with this Order shall be concurrently served on Local 1021.

Chair Martinez and Member Huguenin 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 No. SA-CE-809-M, *Service Employees International Union, Local 1021 v. County of Amador*, in which all parties had the right to participate, it has been found that the County of Amador (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3506, 3506.5(a) and (b), 3507 and 3509(b) and PERB Regulation 32603(a), (b), (f), and (g), by failing to apply the appropriate local rule (PERB Regs. 61010, 61200, and 61380) by taking board action to move forward with the Amador County Employees Association's (ACEA) call for an election to decertify Service Employees International Union, Local 1021 (Local 1021) as the exclusive representative of the County's General Employee Representation Unit (General Unit) and verify the number of signatures received.

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

A. CEASE AND DESIST FROM:

1. Applying any other timing restrictions for the filing of decertification/ certification petitions other than the PERB regulations until it amends its own timing provisions consistent with Employment Relations Policy (ERP) section 24, the MMBA and PERB precedent.

2. Interfering with the right of employees to be represented by the exclusive representative.

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

1. The County will rescind its October 9, 2012 Board of Supervisors action to move forward with the ACEA's call for an election to decertify Local 1021 as the exclusive representative of the General Unit and verify the number of signatures received.

2. Remove section 18(b) from the ERP.

Dated: _____ COUNTY OF AMADOR

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 1021, Charging Party, v. COUNTY OF AMADOR, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-809-M PROPOSED DECISION (January 31, 2013)
AMADOR COUNTY EMPLOYEES ASSOCIATION, Joined Party.	

Appearances: Weinberg, Roger & Rosenfeld by Matthew J. Gauger, Attorney, for Service Employees International Union Local 1021; Gregory G. Gillott, County Counsel, for County of Amador; Rose Law PC, by Joseph W. Rose, Attorney, for Amador County Employees Association.

Before Shawn P. Cloughesy, Chief Administrative Law Judge.

PROCEDURAL HISTORY

This case alleges a public employer's action regarding the filing of petition for decertification/certification as inconsistent with its local rule and therefore violating the Meyers-Milias-Brown Act (MMBA)[1] and PERB Regulations.[2] The public employer contends it did not violate the MMBA.

On October 8, 2012, the Service Employees International Union Local 1021 (Local 1021) filed an unfair practice charge (charge) against the County of Amador (County)

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

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

that it violated its local rule. Local 1021 filed amended charges on October 24, November 16, and December 6, 2012. On December 7, 2012, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint that on October 9, 2012, the County agreed to hold an election decertifying Local 1021 and certifying the Amador County Employee Association (ACEA) as inconsistent with the County's local rule or, in the alternative, maintained an unlawful local rule, in violation of MMBA sections 3503, 3506, 3506.5(a) and (b), 3507 and 3509(b) and PERB Regulation 32603(a), (b), (f) and (g); failed to bargain in good faith between October 16 and November 19, 2012 in violation of MMBA sections 3503, 3505, 3506, 3506.5(a), (b) and (c), and 3509(b) and PERB Regulation 32603(a), (b), and (c); and encouraged unit employees to support one organization in preference to another in violation of MMBA sections 3502, 3503, 3506, 3506.5 (a), (b) and (d), and 3509(b) and PERB Regulation 32603(a), (b), and (d).

On December 19, 2012, the County answered the complaint denying the allegations and asserting affirmative defenses. On December 17, 2012, an informal settlement conference was held, but the dispute was not resolved.

On December 19, 2012, ACEA filed an application that it be joined as a party as ACEA had a direct interest in the subject matter of the action before PERB. The County and Local 1021 did not oppose the joinder. On January 9, 2013, ACEA was joined as a party regarding paragraphs 1 through 9 (the local rule violation allegation) and 15 through 21 (the unlawful assistance violation allegation) of the complaint as it had a substantial interest in the outcome of the case and failure to join it would impede its ability to protect its interest. (PERB Regulation 32164(c) and (d)(2).) On January 23, 2012, ACEA was also joined as a party

regarding paragraphs 10 through 14 (the bad faith bargaining violation allegation) of the complaint.

On December 24, 2012, the ALJ informed the parties that PERB ordered an expedited administrative hearing of the complaint, based upon the local rule violation allegation.

On January 9, 2013, a prehearing conference was held. Without objection from any of the parties, the ALJ ordered that paragraphs 1 through 9 of the complaint (the local rule violation allegation) be heard first on January 23, 2013.

On January 23, 2013, formal hearing was held as to the local rule violation allegation. With the filing of post-hearing briefs on January 29, 2013, the matter was submitted for proposed decision.

FINDINGS OF FACT

The County is a "public agency" within the meaning of MMBA section 3501(c). Local 1021 is a "recognized employee organization" within the meaning of MMBA section 3501(b) and an "exclusive representative" within the meaning of PERB Regulation 32016(b) of the County's General Employee Representation Unit (General Unit). ACEA is an "employee organization" within the meaning of MMBA section 3501(a).

Local 1021 and the County negotiated a Collective Bargaining Agreement covering the period of October 1, 2010 through September 30, 2013 for employees in the General Unit. Mike Fouch (Fouch) has been the Local 1021 Business Representative assigned to represent the employees in the General Unit for the last five years. Prior to these five years, Fouch represented the General Unit employees as a part of SEIU Local 790.

Local Rules

Pursuant to MMBA sections 3507 and 3507.1, on December 4, 1979, the County adopted local rules, the Employment Relations Policy (ERP or Policy), within the meaning of PERB Regulation 32016(c) for the administration of employer-employee relations. These local rules provide in pertinent part:

> SECTION 1. TITLE
>
> This Resolution shall be known as the Employment Relations Policy of the County of Amador.
>
> SECTION 2. PURPOSE
>
> It shall be the purpose of this Policy to promote full communications between the County and its employees by providing an orderly method of establishing wages, hours and other terms and conditions of employment between the County and employee organizations. . . . Nothing contained herein shall be deemed to supersede the provisions of existing state law or the provisions of any negotiated agreement between the County and a recognized employee organization.
>
> [¶ . . . ¶]
>
> SECTION 7. EMPLOYEES: RIGHTS
>
> a. Each individual employee shall have the following rights which he/she may exercise in accordance with the law, applicable ordinances, resolutions, rules and regulations:
>
> (1) The right to form, join and participate in the activities of employee organizations of his/her own choosing for the purpose of representation on matters of his/her employment relations with the County, . . .
>
> SECTION 18. DURATION OF CERTIFICATION; TIME FOR FILING PETITIONS FOR CERTIFICATION OR DECERTIFICATION
>
> a. A certification by the Board of a recognized employee organization of a representation unit shall continue in effect until such recognized employee organization is decertified with respect

to said unit or the Board certifies the same or some other employee organization as the exclusively recognized employee organization for such unit or portion thereof.

b. Following the determination by the Board of an appropriate representation unit and certification of a recognized employee organization of such unit pursuant to Section 17 or 20 of this Policy, no petition for certification as an exclusively recognized employee organization of such unit, or portion thereof, shall be filed with or received by the Board except during the twelve months ensuing from the date of such certification.

SECTION 19. DECERTIFICATION OF RECOGNIZED EMPLOYEE ORGANIZATION

a. Subject to the provisions of Section 18 of this Policy, employees in a representation unit for which there is a recognized employee organization may file with the Board a decertification petition to determine whether or not the recognized employee organization continues to represent a majority of the employees in the representation unit. Such petition must be accompanied by proof of employee support by 30% or more of the employees in the representation unit.

b. Upon receipt of a petition for decertification, the Board shall verify the proof of employee support. If the Board verifies the required proof of employee support it shall call an election to be held in accordance with Section 20 of this Policy.

SECTION 20. ELECTION PROCEDURE

a. Whenever an election is required pursuant to this Policy, the Board shall request the State Conciliation Service to call and conduct a secret ballot election in accordance with its own procedures and regulations and pursuant to the provisions of this Section.

[¶ . . . ¶]

d. The Board may adopt rules for the conduct of elections in those cases where the State Conciliation Service declines to conduct the election. . . .

[¶ . . . ¶]

SECTION 23. INTERPRETATION

a. The Board shall have the authority for the administrative interpretation of this Policy.

[¶ . . . ¶]

SECTION 24. RULES, PROCEDURES AND AMENDMENTS

a. After consulting with recognized and registered employee organizations, the Board may from time to time amend this Policy.

(Emphasis added.)

Fouch first reviewed the ERP approximately three to four years earlier than the day of hearing when he was researching negotiations and impasse procedures. He had not read the ERP in its entirety.

Petition for Decertification/Certification

On September 21, 2012, Joseph W. Rose (Rose), an attorney representing the ACEA, wrote the Board of Supervisors, the County Administrative Officer, the County Counsel and the Human Resources Director petitioning that the County hold a representation election pursuant to ERP sections 18 through 20 to decertify Local 1021 as the exclusive representative of the General Unit and to certify ACEA as the exclusive representative. The petition included signatures in support of ACEA, which ACEA represented was more than 30% of the employees in the General Unit.

The petition also addressed that it appeared that ERP section 18(b) contained a "certification bar." Rose explained:

> It appears the drafters of the [ERP] meant to include and restate the MMBA's 12-month certification bar. Unfortunately, however, someone obviously made an error and included the word "except," so that this provision could, when read together with Government Code section 3507 and applied literally, forever

> bar every employee organization in the County from ever having their exclusive status revoked by employees under any circumstances once recognized—the MMBA would bar revocation for the first twelve months and the [ERP] would bar certification indefinitely thereafter.

(Emphasis added.)

Rose contended that the ERP conflicted with the MMBA by contradicting the 12-month certification bar (MMBA section 3507(b)) and denied employee choice to decertify an employee organization and choose another to represent them (MMBA sections 3502 and 3507). Rose encouraged the Board of Supervisors to exercise their right pursuant to ERP Section 23 to interpret the provisions of the ERP and grant ACEA's request for a secret ballot election. Rose closed the letter with an additional request:

> Additionally, we request that the Board of Supervisors reform the last sentence of section 18, subdivision (b) of the [ERP] to conform to the MMBA by applying it without the word "except." Alternatively, we request that the Board of Supervisors sever section 18, subdivision (b) of the [ERP] entirely as facially invalid.

(Emphasis added.)

On October 2, 2012, County Counsel Gregory G. Gillott (Gillott) forwarded an "Agenda Transmittal Form" for the October 9, 2012 Board of Supervisors meeting to discuss and decide whether to call for an election to decertify Local 1021.

On October 3, 2012, Gillott prepared a "Staff Report" for the Board of Supervisors for the October 9, 2012 meeting regarding the petition to decertify Local 1021. Gillott also identified the same problems with ERP section 18(b) as Rose did. Gillott advised that the ERP certification bar would not withstand a legal challenge as it directly conflicted with the MMBA certification bar (MMBA section 3507(b)). Gillott presented the Board of Supervisors with a number of options: 1) deem the ERP certification bar void and unenforceable, apply the

certification bar of MMBA section 3507(b), and call for an election; and 2) determine that the PERB regulations apply which set forth a contract bar and dismiss the petition for not being filed within the applicable window period. Gillott concluded by recommending the Board of Supervisors call for an election. Gillott advised that it would be unlikely that PERB would impose a contract bar when it was not clearly included in the ERP.

On October 9, 2012, the Board of Supervisors voted to:

> [M]ove forward with the request by Amador County Employee's Association (ACEA) to call for an election regarding the possible decertification of [Local 1021] as the exclusive representative for General Unit employees with the verification of the requisite number of signatures being received and direction given to staff to take necessary steps to implement this action.

ISSUES

1. Was the unfair practice charge timely filed?

2. Did the County violate its local rule or the MMBA when it called for an election to decertify Local 1021 as the exclusive representative of the General Unit?

CONCLUSIONS OF LAW

Timeliness

PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint*

Community College District (1996) PERB Decision No. 1177.)[3] The six-month limitation period commences on the date that the conduct constituting an unfair labor practice was discovered, and not the date of discovery of the legal significance of that conduct. (*Compton Unified School District* (2009) PERB Decision No. 2016; *Empire Union School District* (2004) PERB Decision No. 1650.) A charging party bears the burden of demonstrating that the charge was timely filed. (*Tehachapi Unified School District* (1993) PERB Decision No. 1024; *State of California (Department of Insurance)* (1997) PERB Decision No. 1197-S.)

In cases involving violations of local rules, the statute of limitations generally begins to run when the rule is violated. (*City & County of San Francisco* (2009) PERB Decision No. 2041-M.) In *County of Orange* (2006) PERB Decision No. 1868-M, p. 2, the Board did not reach the issue as to whether there was a unreasonable regulation regarding a signature requirement, in part, because the employee organization never attempted to obtain any proof of support within the six month period prior to the filing of the unfair practice charge. The mere fact that an arguably unreasonable rule exists does not trigger PERB jurisdiction and PERB cannot issue advisory opinions. (*Id.* at pp. 5 and 7.)

In this case, all parties admit that the certification bar in ERP section 18(b) violated MMBA 3507(b), however, PERB's jurisdiction was not triggered until the Board of Supervisors voted to call for a decertification election of Local 1021 on October 9, 2012. As Local 1021 filed its charge on October 8, 2012, challenging what it expected the Board of Supervisors to act upon on October 9, 2012, the charge is therefore deemed timely.

Pertinent MMBA Sections and PERB Regulations:

[3] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

The pertinent MMBA sections concerning a public agency's reasonable rules related to a petition for decertification/certification provide:

> 3500 . . . It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies. . . .
>
> [¶ . . . ¶]
>
> 3502 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. . . .
>
> 3507 (a) A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this chapter.
>
> The rules and regulations may include provisions for all of the following:
>
> [¶ . . . ¶]
>
> (3) Recognition of employee organizations.
>
> [¶ . . . ¶]
>
> (b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.
>
> (c) No public agency shall unreasonably withhold recognition of employee organizations.
>
> (d) Employees and employee organizations shall be able to challenge a rule or regulation of a public agency as a violation of this chapter. This subdivision shall not be construed to restrict or

expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive, of Section 3509.

3509 (a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule.

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, . . . The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(Emphasis added.)

The pertinent PERB Regulations regarding the violation of the MMBA or a local rule related to a petition for decertification/certification provide:

32603 It shall be an unfair practice for a public agency to do any of the following:

[¶ . . . ¶]

(f) Adopt or enforce a local rule that is not in conformance with MMBA.

(g) In any other way violate MMBA or any local rule adopted pursuant to Government Code section 3507.

[¶ . . . ¶]

61010 "Window period" means 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.

[¶ . . . ¶]

61200 The Board shall dismiss a petition requiring a representation election if it determines (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration of such memorandum, provided that if a memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

61380 (a) Upon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary.

(b) The petition shall be dismissed if the existing exclusive representative files a valid disclaimer of interest in representing employees in the unit within 20 days of the date the petition is filed with the regional office.

(c) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed during the window period defined in Section 61010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the unit.

(Emphasis added.)

Unreasonable Regulation

A local government agency may not adopt rules and regulations which "would frustrate the declared policies and purposes of the [MMBA] . . . [T]he power reserved to local agencies . . . was intended to permit regulations which are 'consistent with, and effectuate the declared purposes of, the statute as a whole.'" (*Huntington Beach Police Officers Association v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 502.) The inquiry does not concern whether PERB would find a different rule or different application of the rule more reasonable, or whether the existing rule or its application is unreasonable measured against an arbitrary standard. Instead, the inquiry is whether a disputed rule or its application is consistent with and effectuates the purposes of the express provisions of the MMBA. (*International Brotherhood of Electrical Workers, Local 1245 v. City of Gridley* (1983) 34 Cal.3d 191; *Huntington Beach Police Officers Association v. City of Huntington Beach* (1976) 58 Cal.App.3d 492; *City of San Rafael* (2004) PERB Decision No. 1698-M, and *County of Monterey* (2004) PERB Decision No. 1663-M.) When a local agency's rule or its application is challenged as unreasonable, the burden of proof is on the challenging party. (*Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331, 338 and PERB Regulation 32178.)

All parties admit that the timing component for filing petitions for decertification/certification of ERP section 18(b) directly conflict with MMBA section 3507(b). ERP section 18(b) only allows a decertification/certification petition to be filed within the first 12 months of the exclusive representative's certification and MMBA 3507(b) does not allow for a certification of an exclusive representation to be revoked during the first 12 months. On its face, ERP section 18(b) conflicts with MMBA 3507(b).

The parties disagree on what should take place after the timing component of ERP 18(b) is found to conflict with MMBA section 3507(b). Again, the timing component of ERP is as follows:

> no petition for certification as an exclusively recognized employee organization of such unit, or portion thereof, shall be filed with or received by the Board except during the twelve months ensuing from the date of such certification.

(Emphasis added.)

Local 1021 argues that ERP section 18(b) should be struck as clearly violative of MMBA 3507(b). With this subdivision struck, the local rule would not have a time component for the filing of petitions for certification. Additionally, as ERP section 19(a), which concerns the filing of decertification petitions, specifically states, "[s]ubject to the provisions of Section 18 of this Policy," the time component for decertification petitions in the local rule would also no longer exist. Pursuant to MMBA section 3509, subdivision (a), "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* (2010) PERB Decision No. 2113-M, p. 17.) Under this standard, PERB regulations apply only when the agency has no rule which governs the representation issue. (*County of Orange* (2010) PERB Decision No. 2138-M; *County of Siskiyou/Siskiyou County Superior Court.*) In this case, ERP section 18(b) is directly in conflict with MMBA section 3507(b). When the local rule is found to be invalid, it must be struck and PERB Regulations 61010, 61200, and 61380 must be applied or substituted to provide the timing requirement. If the Board of Supervisors later desires to change its ERP to reflect its own timing requirement, pursuant to MMBA section 3507 and ERP section 24, it is free to do so, barring any other MMBA and case law restrictions.

ACEA and the County contend that the County never intended that the word "except" be included in ERP section 18(b) as it was a "technical" or "typographical error" and if "except" was removed it would track the provision of MMBA section 3507(b). They further argue that the County exercised its authority to administratively interpret ERP section 18(b) pursuant ERP section 23 to ignore the word "except." The problem with their argument is that the express language of the Board of Supervisors' October 9, 2012 action did not make such an administrative interpretation and the Board never amended the ERP to reflect such understanding. Additionally, since the ERP became effective on December 4, 1979, no interpretive evidence was presented that the use of the word "except" was merely a technical or typographical error and that ERP section 18(b) was meant to track MMBA section 3507(b). While their argument as to the misplacement of "except" in ERP section 18(b) is understandable, neither the County nor ACEA presented any legislative intent supporting such argument.

ACEA's and the County's contention that the Board of Supervisors administratively interpreted ERP section 18(b) also strains the meaning of the word "interpretation." ERP section 18(b) and MMBA section 3507(b) are completely opposite in their meaning. To interpret a provision to mean its opposite literal meaning goes beyond interpretation and into the realm of legislation (amending the Policy), especially when a PERB Regulation exists which "fills the gap." This case does not present a matter of interpreting between two likely meanings of the construction of a phrase, but of legislating a *de facto* amendment without following the "consultation in good faith" requirement found in MMBA section 3507(a).

ACEA and the County contend that the Board of Supervisors' action to move forward with the election and ignore a facially invalid section, ERP section 18(b), was the correct

action to take. They cite *County of Calaveras* (2012) PERB Decision No. 2252-M in support of their argument. In *County of Calaveras*, the County had a local rule requiring peace officers to be in a separate unit from non-peace officers which was found to have interfered with employees' rights pursuant to MMBA sections 3508(a) and (d). When the County ignored its own local rule and applied the provisions of the MMBA, PERB did not find that the County violated the MMBA. However, in *County of Calaveras*, the local rule in question did not have a "gap" that could be filled by PERB Regulations, where in the instant case, PERB Regulations 61010, 61200, and 61380 all apply to provide the timing requirement and "fill the gap" when the local rule has been determined to be unlawful under the MMBA. To "apply the MMBA" in this case would be to apply MMBA section 3509(a) and "fill the gap" with the PERB Regulations. For these reasons, *County of Calaveras* is found to be inapposite to the facts in this case.

Because the County ignored its ERP and called for an election, instead of considering the timing component of ERP section 18(b) violative of MMBA section 3507(b) and applying or enforcing PERB Regulations 61010, 61200, and 61380 as its local rule, it violated MMBA sections 3503, 3506, 3506.5(a) and (b), 3507 and 3509(b) and PERB Regulation 32603(a), (b), (f) and (g).[4]

REMEDY

Government Code section 3541.5(c), incorporated within MMBA sections 3509(a) and (b),[5] authorizes PERB:

---

[4] As a violation has been determined on the application of the local rule, the ALJ need not reach a finding on the "alternative" allegation of maintaining an unlawful rule.

[5] Section 3509(a) provides that the powers and duties of PERB described in Government Code section 3541.3 shall also apply to the MMBA. Section 3509(b) describes

> to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

It has been found that the County violated MMBA sections 3503, 3506, 3506.5(a) and (b), 3507 and 3509(b) and PERB Regulation 32603(a), (b), (f) and (g), when it did not apply the PERB Regulations in the absence of a timing component for decertification/certification and called for an election to decertify Local 1021. Therefore, it is appropriate to order that the County rescind its October 9, 2012 Board action to move forward with ACEA's call for an election to decertify Local 1021 as the exclusive representative of the General Unit and verify the number of signatures received; and, to remove ERP section 18(b) in its entirety.[6] The County will also be ordered to cease and desist from applying any other timing component to its decertification/certification process other than the PERB Regulations, until it amends its own timing provisions consistent with ERP section 24, the MMBA, and PERB precedent. It is also appropriate to order the County to cease and desist from interfering with the right of employees to be represented by the exclusive representative.

It is also appropriate that the County be ordered to post a notice incorporating the terms of the order at all locations in the County where notices to public employees are customarily posted for employees in the General Unit. Posting such a notice, signed by the authorized agent of the County, will provide employees with notice that the County has acted in an

---

the unfair practice jurisdiction of PERB. Government Code section 3541.3(i) empowers PERB to investigate unfair practice charges, and to take any action and make determinations as PERB deems necessary to effectuate the policies of this chapter.

[6] Once the timing component phrase is removed from the subdivision, the rest of the subdivision does not stand alone, but is rather contingent on the timing component. Therefore, the entire subdivision must be struck.

unlawful manner, is being required to cease and desist from such activity, and will comply with the order. It effectuates the purposes of the MMBA that employees be informed of the resolution of this controversy and the County's readiness to comply with the ordered remedy. (*Placerville Union School District* (1978) PERB Decision No. 69.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the County of Amador (County) violated the Meyers-Milias-Brown Act (MMBA) sections 3503, 3506, 3506.5(a) and (b), 3507 and 3509(b) and PERB Regulation 32603(a), (b), (f) and (g), by failing to apply the appropriate local rule (PERB Regulations 61010, 61200, and 61380) and taking Board action to move forward with the ACEA's call for an election to decertify Local 1021 as the exclusive representative of the General Unit and verify the number of signatures received.

Pursuant to section 3509(b) of the MMBA, it hereby is ORDERED that the County, its governing council and its representatives shall:

A. CEASE AND DESIST FROM:

1. Applying any other timing restrictions for the filing of decertification/certification petitions other than the PERB Regulations until it amends its own timing provisions consistent with ERP section 24, the MMBA, and PERB precedent.

2. Interfering with the right of employees to be represented by the exclusive representative.

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

1. The County will rescind its October 9, 2012 Board action to move forward with the ACEA's call for an election to decertify Local 1021 as the exclusive representative of the General Unit and verify the number of signatures received.

2. Remove section 18(b) from the ERP.

3. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the County's General Unit 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 it 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.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on Local 1021.

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 Public Employment Relations Board (PERB or 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 95811-4124
(916) 322-8231
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, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (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 California Code of Regulations, title 8, section 32135, subdivision (d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

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, §§ 32300, 32305, 32140, and 32135, subd. (c).)