

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**



LOS RIOS COMMUNITY COLLEGE DISTRICT,

Employer,

And

LOS RIOS POLICE OFFICERS ASSOCIATION,

Petitioner,

And

SERVICE EMPLOYEES INTERNATIONAL  
UNION LOCAL 1021,

Exclusive Representative.

Case No. SA-SV-186-E

PERB Decision No. 2587

October 2, 2018

Appearances: Rains Lucia Stern St. Phalle & Silver, by Vance Piggott, Attorney, for Los Rios Police Officers Association; Littler Mendelson, by Bruce Sarchet, Attorney, for Los Rios Community College District.

Before Banks, Winslow, and Krantz, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to the attached proposed decision by a hearing officer (Hearing Officer) granting a Severance Petition filed by the Los Rios Police Officers Association (Association). The Association seeks to create a new bargaining unit at the Los Rios Community College District (District) by severing three classifications—Police Officer, Detective, and College Safety Officer—from the larger Maintenance/Operations and Campus Police Officers Unit (Support Services Unit) represented by Service Employees International Union, Local 1021 (SEIU).

We have reviewed the entire record in this case, including the Severance Petition, the hearing transcript, the proposed decision, and the parties' written submissions, and we have considered the parties' arguments in light of applicable law. While we adopt the Hearing Officer's findings of fact, our analysis and conclusions depart from the proposed decision. For the reasons we explain below, we find that the Association has not met its burden of showing that severing the aforementioned classifications and creating the requested police officers' unit would be more appropriate than maintaining the existing Support Services Unit, and accordingly we dismiss the Severance Petition.

### BACKGROUND

This is the second time we have reviewed a petition seeking to remove approximately 16 employees who work within the District's Police Services Department from the 202-person Support Services Unit and to establish a separate campus police officers unit. In *Los Rios Community College District* (2016) PERB Decision No. Ad-442 (*Los Rios CCD*), SEIU filed a unit modification petition asking PERB to sever from the Support Services Unit a new, separate police officers unit.<sup>1</sup> We denied SEIU's petition, noting that the existing Support Service Unit is presumptively appropriate under *Sweetwater Union High School District* (1976) EERB Decision No. 4 (*Sweetwater*),<sup>2</sup> and as a result "the burden is on the petitioner to show that the requested unit is more appropriate." (*Los Rios CCD, supra*, PERB Decision

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<sup>1</sup> It is impossible to say whether the two requests are identical, as in the earlier-filed unit modification request, SEIU failed to identify the specific police officer positions it sought to include in the proposed police officer unit. (*Los Rios CCD, supra*, PERB Decision No. Ad-442, p. 3.) The severance request at issue here seeks to create a new unit consisting of thirteen Police Officers, two College Safety Officers, and one Detective.

<sup>2</sup> Prior to 1978, PERB was known as the Educational Employment Relations Board, or EERB.

No. Ad-442, p. 3.) We affirmed the Office of the General Counsel’s dismissal of SEIU’s unit modification petition, finding that SEIU provided insufficient evidence to show that splitting the Support Services Unit was more appropriate than maintaining the existing *Sweetwater* unit. (*Id.* at pp. 3-4.)

Approximately six months after we declined SEIU’s request to divide the Support Services Unit into two SEIU-represented units, the Association filed the petition in this case to sever the same or similar police department classifications from the main unit and to become those employees’ exclusive representative. The District opposed the Association’s Severance Petition, just as it opposed SEIU’s unit modification petition. SEIU initially stated that it did not oppose the Association’s Severance Petition, but then changed course at the hearing in this matter, objecting to the severance of the College Safety Officer and Detective classifications.<sup>3</sup>

#### DISCUSSION

In *Sweetwater, supra*, EERB Decision No. 4, the Board established three presumptively appropriate bargaining units for classified employees of school districts, including: (1) an operations-support services unit, (2) an instructional aides (paraprofessional) unit; and (3) an office-technical and business services unit. There is no dispute that the current Support Services Unit is an operations-support services unit and is therefore presumptively appropriate under *Sweetwater*. (*Los Rios CCD, supra*, PERB Decision No. Ad-442, p. 3.) For that reason, “the burden is on the petitioner to show that the requested unit is more appropriate.” (*Ibid.*) Thus, to meet its burden, the Association must show not only that its proposed unit is appropriate, but that it is *more appropriate* than the existing unit. (*Los Angeles Unified School*

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<sup>3</sup> The Hearing Officer granted the Association’s motion to amend its Severance Petition to include the sole Detective. Although both the District and SEIU objected to the amendment, neither party excepted to the Hearing Officer’s ruling on that matter.

*District* (1998) PERB Decision No. 1267, adopting proposed decision at p. 47 (*LAUSD II*), citing *Compton Unified School District* (1979) PERB Decision No. 109; *Long Beach Community College District* (1999) PERB Decision No. 1315, adopting proposed decision at p. 10 (*Long Beach CCD*); *Los Angeles Unified School District* (1993) PERB Order No. Ad-250, p. 6 (*LAUSD I*.)<sup>4</sup>

In determining unit appropriateness, we consider community of interest among employees, efficiency of employer operations, and established practices, including both negotiating history and the extent to which employees belong to the same employee organization. (Gov. Code, § 3545, subd. (a); *LAUSD II, supra*, PERB Decision No. 1267, adopting proposed decision at p. 47, citing *Livermore Valley Joint Unified School District* (1981) PERB Decision No. 165, p. 5 (*Livermore*.) Negotiating history is of particular importance when considering a severance request, as “a stable negotiating relationship will not be lightly disturbed.” (*Livermore, supra*, p. 6.) In seeking to divide a presumptively appropriate *Sweetwater* unit, the Association must “show that there has been a change of circumstances sufficient to justify a variation of an established unit.” (*LAUSD I, supra*, PERB Order No. Ad-250, p. 6.)

A community of interest exists if employees “share a substantial mutual interest in matters subject to meeting and negotiating.” (*LAUSD II, supra*, PERB Decision No. 1267, adopting proposed decision at p. 49, quoting *Monterey Peninsula Community College District* (1978) PERB Decision No. 76.) “[I]t is axiomatic that every classification has attributes

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<sup>4</sup> In *LAUSD I*, we affirmed the dismissal of a severance request filed by Busdrivers Association for Unity (BAFU), which sought to sever two bus driver classifications from an established operations-support services unit. (*LAUSD I, supra*, PERB Order No. Ad-250.) In *LAUSD II*, we denied a second severance petition filed by BAFU regarding the same bus driver classifications. (*LAUSD II, supra*, PERB Decision No. 1267.)

distinguishing it from all other classifications in an existing unit.” (*LAUSD II, supra*, PERB Decision No. 1267, p. 55.) But it is not enough to show that the group to be severed has a community of interest among themselves. “It is also necessary to establish that their community of interest is not shared with the larger group.” (*Oakland Unified School District* (2001) PERB Decision No. 1464, adopting proposed decision at p. 21.) Even classifications whose interests and priorities conflict may have a sufficient community of interest, “unless it is concretely shown that collective negotiations are incapable of simultaneously addressing competing bargaining interests.” (*LAUSD II, supra*, PERB Decision No. 1267, pp. 49-50, citing *Santa Clara Office of Education* (1990) PERB Decision No. 839.)

In this case, while the proposed severed police department classifications share a distinct community of interest, we do not find that the classifications lack a community of interest with other employees in the presumptively appropriate *Sweetwater* unit. We reach this conclusion because the differences on which the Association relies—including the police employees’ unanimous opposition to a recently-approved collective bargaining agreement between SEIU and the District—are not materially different from the garden variety differences that commonly exist within a bargaining unit. Moreover, as discussed below, collective negotiations can simultaneously address the interests of the police classifications and the interests of other unit employees.

Negotiating history is an important factor in determining whether to sever selected classifications from a unit. In order for this factor to favor severance, the Association must demonstrate that the exclusive representative has neglected or ignored the interests of Police Officers, College Safety Officers, and Detectives. (*Wheatland Elementary School District* (2001) PERB Decision No. 1434, p. 16; *Department of Personnel Administration* (1989) PERB

Decision No. 773-S, p. 7.) We do not find that the Association has met this burden, and we affirm the Hearing Officer's finding that it is possible for a union to represent the petitioned-for classifications adequately even while they remain part of the larger unit established under *Sweetwater*.

In fact, SEIU has made repeated efforts to address wage concerns and other issues unique to the police department classifications. Employees in the disputed classifications served as members of SEIU's negotiating team in the last six rounds of negotiations, since 1997. In 2008, SEIU created a Police Officer Chapter to better represent District police department employees. While this may show that SEIU recognizes that the police classifications have separate and distinct bargaining interests, these differences are not irreconcilable. In both 2014 and 2017, SEIU negotiated a salary increase for police officers far in excess of that bargained for other members of the unit, and indeed other bargaining unit employees received a lesser pay increase as a result. SEIU's bargaining team supported this differential allocation of funds in 2014 and 2017, and the full unit membership ratified both agreements. Thus, while the petitioned-for police department classifications make up less than 10 percent of the Support Services Unit, this "readily identifiable minority of unit members is not required to relinquish its issues regularly to the more powerful majority." (*LAUSD II*, *supra*, PERB Decision No. 1267, adopting proposed decision at pp. 55-56.)

It may be the case that a majority of incumbents presently in the police department classifications prefer a separate unit—as demonstrated by the instant Severance Petition and the earlier unit modification petition. SEIU, similarly, has at times embraced a separate unit. There is no showing, however, that collective negotiations are incapable of addressing the unit members' varied interests.

The remaining statutory criterion—efficiency of operations—neither favors nor disfavors severance on this record. Although the District argues that it would experience at least some loss of efficiency as a result of severance, such an efficiency argument militates against severance only if there is concrete evidence that an employer’s operational efficiency will be “unduly impaired by an additional set of negotiations.” (*Long Beach CCD, supra*, PERB Decision No. 1315, adopting proposed decision at p. 12; *Livermore, supra*, PERB Decision No. 165, p. 8.) If the District had demonstrated such undue impairment, then proliferation of units would be a relevant factor to consider. Here, however, the District did not lay a concrete foundation for its efficiency argument, as it relied mainly on the axiom that an employer will experience additional bargaining demands if it must meet and confer with respect to a greater number of units. Our precedent requires a greater showing, as the legislative purpose underlying EERA presupposes that employers will face some burden in collective bargaining, and this burden cannot militate against creation of new units in every case. (*Livermore, supra*, PERB Decision No. 165, p. 8.)

#### CONCLUSION

We find that the Association has failed to show that granting severance and creating a separate unit of police classifications would be more appropriate than maintaining the existing unit, and thus the Association has failed to overcome the *Sweetwater* presumption.

#### ORDER

The Severance Petition in Case No. SA-SV-186-E is hereby DISMISSED.

Members Banks and Winslow joined in this Decision.



**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD**

LOS RIOS COMMUNITY COLLEGE DISTRICT,

Employer,

and

LOS RIOS POLICE OFFICERS ASSOCIATION,

Petitioner,

and

SERVICE EMPLOYEES INTERNATIONAL  
UNION LOCAL 1021,

Exclusive Representative.

REPRESENTATION  
CASE NO. SA-SV-186-E

PROPOSED DECISION  
(May 31, 2018)

Appearances: Rains Lucia Stern St. Phalle & Silver, by Vance Piggott, for the Petitioner, Los Rios Police Officers Association; Littler Mendelson, by Bruce Sarchet, for the Employer, Los Rios Community College District; Weinberg Roger and Rosenfeld, by Matt Gauger, for the Exclusive Representative, Service Employees International Union Local 1021.

Before Brendan P. White, Hearing Officer.

**PROCEDURAL HISTORY**

On April 3, 2017, the Los Rios Police Officers Association (Association or Petitioner), filed a Severance Request (Petition) with the Public Employment Relations Board (PERB or Board), pursuant to PERB Regulation 33700<sup>1</sup> and the Educational Employment Relations Act (EERA),<sup>2</sup> seeking to sever a unit of Police Officers and Campus Safety Officers at the Los Rios Community College District (District or Employer) from the larger Maintenance/Operations and

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<sup>1</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

<sup>2</sup> EERA is codified at Government Code section 3540 et seq. All further statutory references shall be to the Government Code unless otherwise stated.



Campus Police Officers Unit represented by Service Employees International Union, Local 1021 (SEIU). On May 1, 2017, the District filed a response opposing the Petition. On May 12, 2017, SEIU filed a response declaring its neutrality in the matter. On January 26, 2018, Petitioner filed a Request to Amend the Petition, seeking to add the Detective classification to the proposed bargaining unit. Both the District and SEIU opposed the Request to Amend. For the reasons described below, the Petitioner's request is granted. A formal hearing was held in this matter on January 29, 2018, at which time the parties offered testimony and documentary evidence. The record was closed and the case submitted for decision on March 14, 2018, when the Petitioner and District filed their post-hearing briefs.

#### FINDINGS OF FACT

The District consists of four community college campuses serving roughly 80,000 students from throughout Sacramento County. Currently, the District's approximately 3,700 employees are divided into four established bargaining units: a faculty unit, two classified units, and a supervisors' unit. These units were created in 1977 and have remained unchanged ever since. Of the two classified units, the Los Rios Classified Employees Association (LRCEA) represents around 795 "white collar" employees in classifications like Instructional Assistants, Administrative Assistants, and other clerical staff. SEIU represents the remaining 202 classified, non-supervisory employees in the Maintenance/Operations and Campus Police Officers Unit, sometimes called the Operations-Support Services unit. This Petition is concerned with the approximately 16 current employees from that unit who work within the District's Police Services Department.

Police Services Department.

The District's Police Services department is organized by college campus, but also includes operations at the District office. The department is headed by a Chief, who is supported by two Administrative Assistants. Each campus has a Police Captain, a Police Sergeant, Police Officers and College Safety Officers. At the District office, operations are headed by a Police Sergeant, and include the Police Detective, the Dispatchers and a College Safety Officer. An additional College Safety Officer reports to the Director of Administrative Services at American River College.

The Chief and Police Captains are not represented, but the other employees within the Police Services Department belong to three different bargaining units represented by three separate organizations. As of July 2017, the Police Sergeants are considered supervisors represented by the Los Rios Supervisors Association (LRSA).<sup>3</sup> The Administrative Assistants and Dispatchers are members of the LRCEA-represented unit. As already noted, SEIU currently represents the Petitioned-for employees: Detective, Police Officers, and College Safety Officers.

As of the date of the filing of the Petition, there were thirteen Police Officers, two College Safety Officers, and one Detective in the District. Additionally, there are three vacant College Safety Officers, meaning the unit could be as large as 19 under the District's current budget and staffing plans. The parties offered substantial evidence about the job duties of these employees.

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<sup>3</sup> Prior to July 1, 2017, the Sergeants were in the SEIU bargaining unit. The classification was moved into the Supervisor's unit as part of an agreement between the District, SEIU, and LRSA.

## Police Officers

The job duties for the position of District Police Officer are identified in a written job description and include foot and vehicle patrol, writing reports, issuing citations, and maintaining public safety. Police Officers communicate with Dispatchers and College Safety Officers via District-issued radios.

Police Officers also perform basic maintenance on the campus parking kiosks, like putting new paper in the machines, and clearing coin and bill jams. District Police Officers typically work Monday through Friday, on either a day shift or a swing shift, which they bid for based on seniority.

Police Officers must complete a course of training that is certified by the Commission on Peace Officer Standards and Training (POST), be licensed to carry firearms, and meet and maintain all other POST-related requirements. The duty to carry firearms was added to the Police Officer classification in or around 2005. In addition to this specialized training, Police Officers must pass a psychological examination and background check prior to hiring. Police Officers use specialized tools and equipment on the job, such as a gun, a baton, handcuffs and pepper spray. Additionally, Police Officers wear a special uniform and badge to distinguish them from other employees, and they use marked police vehicles. In performing their duties, Police Officers interact with students, faculty, other classified employees, visitors, contractors, and anyone else who might be on District property.

As sworn peace officers under Penal Code section 830.32,<sup>4</sup> Police Officers must uphold the law and are responsible for detaining and/or arresting anyone they reasonably suspect has committed a crime, including fellow District employees. In that regard, at least one Police

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<sup>4</sup> “The following persons are peace officers...(a) Members of a California Community College police department...” (Penal Code, § 830.32(a).)

Officer, Alex Conroy, testified that he has investigated two or three crimes or incidents of misconduct allegedly committed by SEIU unit members employed by the District.

Police Officers are entitled to special protections and rights under the Public Safety Officers Procedural Bill of Rights Act (POBRA).<sup>5</sup> These special protections are recognized in the District's collective bargaining agreement with SEIU, specifically Article 16, section 16.7, which requires that a copy of the POBRA protections be provided to each Police Officer. Additionally, the District has specialized policies dealing with the investigation and discipline of Police Officers. The policies, including District Policy 1009, include special procedural and substantive due process protections not afforded to other employees, and state that decisions with respect to discipline must be made by the Chief, as opposed to the District's regular human resources personnel.

#### College Safety Officers

The District's College Safety Officers are not sworn peace officers. However, they do complete an abbreviated police officer training relating to lawful arrest procedures, and assist Police Officers in the performance of their broad law enforcement duties. According to the written job description, the College Safety Officer classification was created in 2000. Such employees are responsible for performing patrol duties, assisting with traffic control on District property, assisting with investigations, evidence collection, report drafting, and enforcing laws, traffic regulations, and safety regulations throughout District property. A significant part of their duties are focused on the maintenance of the District's parking kiosks. Like Police Officers, College Safety Officers wear a uniform designating them as members of the District's Police Services Department, and they drive vehicles marked with the District's Police Department logo.

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<sup>5</sup> POBRA is codified in Government Code, § 3300 *et seq.*

While they do not carry firearms, appropriately trained College Safety Officers may carry pepper spray, handcuffs, and/or batons. Also, like the Police Officers, College Safety Officers utilize District-issued radios to communicate with Dispatchers and each other. The record evidence includes testimony from one former College Safety Officer, Kathleen Church, who previously worked as a District Police Officer, indicating there is at least some movement between the two classifications.

### Detectives

The job duties and qualifications of the District Detective are virtually identical to those of Police Officers. According to the written job description, the Detective position was created in 2008 and the classification's duties include leading criminal and non-criminal investigations, controlling crime scenes, supervising the collection and preservation of evidence, preparing detailed investigative reports, and conducting background investigations for prospective employees. Witness testimony indicated that both Police Officers and College Safety Officers worked closely with the Detective as necessary.

### Bargaining History

SEIU has represented Police Officers since 1977, and College Safety Officers and Detectives since those classifications were initially established. Throughout that time, SEIU and the District have successfully negotiated successive collective bargaining agreements covering the terms and conditions of these classifications' employment. The District and SEIU have had a relatively stable and productive relationship. For example, there have been no strikes or pickets for at least decade.

The record evidence indicates that Police Officers have played an active role in negotiations between SEIU and the District. For instance, Police Officers have served on SEIU's

bargaining team for every contract negotiation since 1997, which typically occur every three years. Since 2008, Police Officers have had their own chapter within SEIU, with its own bylaws and elected officers. According SEIU, it created this chapter in response to a request from Police Officers. According to Conroy, who acts as the President of SEIU's Police Officer Chapter, the Chapter was created in response to efforts by Police Officers to break away from SEIU and form their own union.

In any event, as noted above, SEIU and the District have negotiated contract language to address specific concerns of Police Officers. Moreover, SEIU has successfully negotiated special wage increases for Police Officers in the last two rounds of negotiations: 8% over and above the rest of the bargaining unit in 2014, and 10% over and above the bargaining unit in 2017. Although the Detective classification received the 2017 raise, the record is silent as to any additional wage increases for College Safety Officers.

According to the District's evidence, the creation of the new Petitioned-for unit would require an increased investment in time and money, owing to the time and energy it would take to negotiate a new collective bargaining agreement. The District also offered evidence indicating that the creation of a new unit could lead to an additional proliferation of units for tradespeople and other classifications with distinct characteristics. Thus, the District is primarily concerned that the Petition threatens the efficiency of its operations.

#### ISSUE

Should the proposed unit be severed from the existing SEIU unit?

## CONCLUSIONS OF LAW

### Request to Amend Petition

As noted above, the Petitioner requested to amend the Petition on January 26, 2018, to include the Detective classification. PERB Regulation section 33100(c) states that,

Amendments to correct technical errors, add or delete job classifications or positions from a party's proposed unit which are requested after the issuance of the notice of hearing are subject to approval by the Board agent assigned to the hearing. The Board agent may grant the requested amendment, if it will not unduly impede the hearing, and if sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the Board agent.

There is no good reason to deny the requested amendment to add the Detective classification to the Petition. First, there is only one Detective and the addition of this one employee does not undermine the more than adequate proof of support for the Petition. Second, the addition of the Detective did not delay or complicate the hearing, which began as scheduled and concluded in one day. Indeed, the parties were able to proffer evidence about the Detective and argue the matter without impediment. Finally, there is no good cause to require an additional posting period in this case. Rather, it seems likely that the Petitioner always intended to seek inclusion of the Detective in its proposed unit and inadvertently omitted the classification from the original Petition. On this basis, the Petition is amended to include the Detective.

### Appropriate Standard

Subdivision (a) of EERA section 3545 sets forth the standards for determining the appropriateness of a unit as:

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other

things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

Additionally, the negotiating history of the unit must be considered an important factor, along with subdivision (a) of EERA section 3545, when evaluating a severance request. (*Livermore Valley Joint Unified School District* (1981) PERB Decision No. 165.)

Here, the applicable standard is further informed by *Los Rios Community College District* (2016) PERB Decision No. AD-442 (*Los Rios CCD*), where the Board denied a Unit Modification Petition filed by SEIU to create a new separate police officer unit. In that case, the Board concluded that SEIU's existing Operations-Support Services Unit was presumptively appropriate under *Sweetwater Union High School District* (1976) EERB Decision No. 4 (*Sweetwater*).<sup>6</sup> On that basis, the Board clarified that "the burden is on the petitioner to show that the requested unit is more appropriate." (*Los Rios CCD*, at p. 3.) Thus, Petitioner must show not only that its proposed unit is appropriate, but that it is more appropriate than the existing unit based upon a separate and distinct community of interest among the affected employees.<sup>7</sup> (See *Compton Unified School District* (1979) PERB Decision No. 109.)

### Community of Interest

In support for its contention that there exists a separate and distinct community of interest between and among the petitioned-for classifications, Petitioner relies principally on

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<sup>6</sup> Prior to 1978, PERB was known as the Educational Employment Relations Board, or EERB.

<sup>7</sup> Petitioner argues that the current unit is "minimally appropriate" under *Sweetwater* because it has undergone several changes since establishment in 1977, e.g., the relatively recent creation of the Detective and College Safety Officer classifications. However, there is no case law to support the notion that some *Sweetwater* units are more presumptively appropriate than others. Rather, the burden remains the same: Petitioner must show its proposed unit is more appropriate utilizing the factors set out in EERA section 3545, subdivision (a).



*Sacramento City Unified School District* (1977) EERB Decision No. 30 (*Sacramento City*), where the EERB agreed with the school district that a separate unit of security officers was appropriate, rather than a wall-to-wall classified unit which included security officers. There, the Board stated:

Security officers are deputized to make arrests for crimes committed on school grounds. All officers must complete a basic course in arrest and fire arms training as provided by the California Penal Code. The special officers enforce laws and regulations of both the District and the City of Sacramento; they have the authority to make misdemeanor arrests. They have the authority to arrest other employees of the District if those employees are engaged in violations of the law.

We conclude that a separate unit of security officers is appropriate. Strong policy considerations, long recognized in the private sector, require the separation of bona fide security guards from the remainder of the classified employees. Security officers are deputized and employed to defend the District's premises from others, be they outsiders, students or other employees of the District. They are empowered to enforce not only the rules and regulations of the District, but also the laws of the City of Sacramento. The employer is entitled to a nucleus of protection employees to enforce its rules and protect its property and persons without being confronted with a division of loyalty inherent in the inclusion of security officers in the same unit with other classified employees. [Citations.] Accordingly, we find a separate unit of security officers appropriate for negotiating.

(*Ibid.*, pp. 5-6; emphasis added; fn. omitted.)

Similarly, in *Long Beach Community College District* (1999) PERB Decision No. 1315 (*Long Beach*), also cited by Petitioner, PERB followed the precedent in *Sacramento City* by severing a separate unit of security officers from the wall-to-wall classified unit when the petition was supported by the employer. (*Ibid.*, p. 11.) However, in an earlier decision, PERB distinguished *Sacramento City* in *Unit Determination for Service Employees of the University of California* (1982) PERB Decision No. 245-H (*Unit Determination*), when the employer *opposed* a separate security unit, stating:

The policy of providing a separate unit is for the employer's benefit. Since in this case, the University opposes a separate security unit, there is no reason to apply that policy here. Instead, the unit determination for these employees must be based on the criteria set forth at section 3579(a) of HEERA.

(*Ibid.*, p. 10; emphasis added.)

In this case, the District opposes the severance of the proposed unit. Thus, the principle set out in *Sacramento City* cannot be readily applied here. Rather, to determine whether a separate and distinct community of interest exists among employees, it is necessary to consider a variety of factors such as job function, method of compensation, wages, hours, employment benefits, supervision, qualifications, training and skills, and contact and interchange with other employees. (*San Diego Community College District* (2001) PERB Decision No. 1445, p. 8, citing *Office of the Santa Clara County Superintendent of Schools* (1978) PERB Decision No. 59.) Thus, Petitioner must show that the proposed unit has a "separate and distinct community of interest" from the existing unit. (*Lodi Unified School District* (2001) PERB Decision No. 1429.) Such determinations are made after considering the totality of the circumstances. The point of inquiry is whether the employees between the proposed and existing units share substantial mutual interests. (*Monterey Peninsula Community College District* (1978) PERB Decision No. 76, p. 13.)

Here, the record evidence reveals that the petitioned-for classifications share a community of interest that is distinct from those of the other classifications in SEIU's unit. All three classifications—Police Officer, College Safety Officer, and Detective—are uniquely devoted to public safety. They carry various weapons, wear distinct uniforms, receive specialized training, are subject to unique rules and policies, and must carry responsibilities unlike any other employee. Indeed, under certain circumstances, all three classifications could

be required to investigate, arrest, and/or use force against fellow employees, including those in SEIU's bargaining unit.

Conversely, the record contains no evidence suggesting that any of these classifications has more than incidental contact with the others in SEIU's bargaining unit, let alone substantial mutual interests. The majority of the work of the service employees who comprise the larger *Sweetwater* unit is devoted to "physical laboring tasks to maintain the campus physical environment." (*Unit Determination* at p. 6.) While there was some evidence regarding the responsibility of the College Safety Officers to maintain parking kiosks, on the whole, the petitioned-for classifications do not perform the type of service work that is the hallmark of the larger unit.

Given the totality of the circumstances, it seems clear that the petitioned-for unit possesses the requisite community of interest to support the severance request.

#### Negotiating History

Negotiating history is an important factor in determining whether to sever a unit, and a stable negotiating relationship will not be lightly disturbed. Nonetheless, it is but one of several criteria looked to by the Board. (*Livermore, supra*, PERB Decision No. 165, p. 6.) In order to place this factor firmly in favor of severance, Petitioner must show that the incumbent representative is not fully capable of "effectively addressing subjects within the scope of representation." (*Los Angeles Unified School District* (1998) PERB Decision No. 1267, p. 58.) Although SEIU may have not achieved all of its bargaining goals for the petitioned-for classifications, the relevant question is whether it addressed "issues of primary concern" in negotiations. (*State of California (Department of Personnel Administration)* (1989) PERB Decision No. 773-S (*Department of Personnel Administration*), adopted proposed decision, p.

16.) Stated another way, Petitioner must demonstrate that the interests of Police Officers, College Safety Officers, and Detectives have been neglected or “trampled upon or ignored” by SEIU. (*Wheatland Elementary School District* (2001) PERB Decision No. 1434, p. 16, and *Department of Personnel Administration, supra*, PERB Decision No. 773-S, p. 7.)

Here, the record evidence does not establish SEIU’s incapability to represent the petitioned-for classifications. On the contrary, it seems clear that SEIU has made repeated efforts to address wage and other concerns unique to the Police Officers. However, at the same time, it is also evident that the petitioned-for classifications have drifted away from the larger unit, a fact that SEIU recognized and attempted to control when it established the Police Officer Chapter in 2008. This “union within a union,” as SEIU termed it, is evidence of the proposed unit’s separate and distinct bargaining interests, and SEIU’s need to give voice to those interests through a specialized collective bargaining structure. Finally, apart from the proposed inclusion of Detectives, SEIU has staked out a neutral position in this matter, which is also suggestive of a certain resignation to fact that the petitioned-for classifications have evolved a separate culture and distinct community of interest.<sup>8</sup>

In sum, the negotiating history does not strongly militate in favor of or against the requested severance. At the same time, the history does suggest that the petitioned-for classifications have developed a distinct character even within SEIU. In this, the evidence dovetails with the community of interest factors and thus helps to tip the scales in the direction of severance.

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<sup>8</sup> Indeed, the fact that SEIU previously filed a failed unit modification petition to create a new unit out of these classifications is perhaps the best evidence of its recognition that a separate unit is, in its words, necessary to meet “the needs of its own members.” (*Los Rios CCD, supra*, at p. 4.)

## Efficiency of Operations

The District presented evidence that the creation of the new unit would negatively affect the efficiency of its operations. Specifically, the District's witness and Associate Vice Chancellor of Human Resources, Ryan Cox, testified that the District would have to expend additional resources and funds to bargain a contract with Petitioner. Admittedly and necessarily, this testimony was speculative, but the District's extensive experience negotiating with various exclusive representatives adds more than a little credibility to its estimates and projections. Coupled with the relative small size of the requested unit, the evidence reliably suggests that the District will experience at least some loss of efficiency as a result of the new obligations another unit would create.

Furthermore, as the Board noted in *Los Rios*, "[c]arving out police officers from the existing unit and forming a new unit would increase the total number of units in the District from four to five. This is the definition of proliferation...." (*Los Rios CCD* at p. 5.) Thus, there is at least some risk that this request could lead to fragmentation of the various bargaining units, which is the chief harm the rule against excessive proliferation guards against.

However, the record evidence does not ultimately lay a concrete foundation for any of these potential harms to the efficiency of the District's operations. First, the bargaining history between SEIU and the District has already resulted in numerous provisions that are specific to the petitioned-for unit. That is, it appears much of the groundwork for a separate unit has already been laid, and there is no reason to believe that the District and Petitioner will have to begin from scratch or recreate the proverbial wheel should the affected employees choose to be represented in their own unit. Second, the District already has two classified units, and it is not

clear that a third will unduly impair its operations, especially since the Board long ago endorsed the notion that as many as three classified units strikes an appropriate “balance between the District’s desire to be free of excessive unit fragmentation and the need of employees and organizations to work within sufficiently divided groupings.” (*Livermore* at p. 9 (citing *Antioch Unified School District (1977) EERB Decision No. 37*.) Finally, there is no concrete support for the imagined threat that other groups of employees, like tradespeople, will seek to break away from SEIU.

Accordingly, the District’s concerns about the efficiency of its operations are insufficient to tip the scales against the request.

#### Conclusion

The record evidence establishes that the District’s Police Officers, College Safety Officers, and Detective enjoy a distinct community of interest, that the relevant negotiating history supports the request, and that neither the efficiency of the District’s operations nor any other factor militates against the creation of a separate unit for these employees. In other words, Petitioner has successfully carried its burden to establish that its petitioned-for unit is more appropriate than the existing unit. On this basis, the Petition is granted.

#### PROPOSED ORDER

Pursuant to PERB Regulations 33470 and 33490, PERB shall conduct an election to determine whether the Police Officers, College Safety Officers, and Detective wish to be represented by the Los Rios Police Officers Association or SEIU, unless one of these organizations informs PERB in writing that it does not desire to participate in the election.<sup>9</sup> A

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<sup>9</sup> Pursuant to EERA section 3544.1 and PERB Regulations 33480 and 33485, if only one organization desires to appear on the ballot and that employee organization has demonstrated majority support in the unit determined to be appropriate, the employer must

Board agent will contact the parties upon issuance of a final decision in this matter to discuss the further processing of this case. Should this proposed decision become final, the parties shall be served with a copy of the decision and a notice of decision which must be posted by the District pursuant to PERB Regulations 33440 and 33450.

#### Right of Appeal

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 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

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grant voluntary recognition or PERB will certify the organization as the exclusive representative.

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).)