

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



COUNTY OF ORANGE,

Employer,

and

UNION OF AMERICAN PHYSICIANS &
DENTISTS,

Petitioner,

and

ORANGE COUNTY EMPLOYEES
ASSOCIATION,

Exclusive Representative.

Case No. LA-SV-161-M

Administrative Appeal

PERB Order No. Ad-386-M

October 25, 2010

Appearance: Lawrence Rosenzweig, Attorney, for Union of American Physicians & Dentists.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Union of American Physicians & Dentists (UAPD) of a Board agent's administrative determination on its petition for severance. The petition sought to sever five classifications from the County of Orange's (County) Healthcare Professionals bargaining unit, which is exclusively represented by the Orange County Employees Association (OCEA). The Board agent dismissed the petition for lack of jurisdiction because the County has a local rule that governs severance petitions.

The Board has reviewed the administrative determination and the record in light of UAPD's appeal and the relevant law. Based on this review, the Board affirms the dismissal of UAPD's petition for the reasons discussed below.

FACTUAL AND PROCEDURAL BACKGROUND

On February 26, 2009, UAPD filed unfair practice charge number LA-CE-518-M alleging that the County violated the Meyers-Milias-Brown Act (MMBA)¹ by denying UAPD's petition to sever the following five classifications from the Healthcare Professionals bargaining unit: Community Mental Health Psychiatrist, Physician, Physician Specialist, Public Health Medical Officer I, and Dentist. On March 25, 2009, UAPD filed an identical severance petition with PERB that was assigned case number LA-SV-159-M. In response to the petition, the County informed PERB that severance can be achieved via section 9, "MODIFICATION OF REPRESENTATION UNITS," of the County's Employee Relations Resolution (ERR). UAPD withdrew the petition in case number LA-SV-159-M on May 6, 2009.

On June 23, 2009, UAPD filed an identical severance petition in this case. On July 8, the Board agent issued an order to show cause why the petition should not be dismissed for lack of jurisdiction based on the information obtained during the investigation in case number LA-SV-159-M. UAPD responded on July 23, asserting that PERB had jurisdiction because the County has no local rule governing severance and the procedure in ERR section 9 is insufficient to protect the rights of employees in the five classifications UAPD sought to sever from the unit. On September 2, 2009, OCEA filed a declaration by its general manager, Nick Berardino, that listed 10 instances where ERR section 9 had been used to sever classifications from an existing bargaining unit for placement in a new bargaining unit.

On December 14, 2009, a PERB administrative law judge (ALJ) issued a proposed decision in case number LA-CE-518-M which found that severance could be achieved via section 9 of the County's ERR. Based on this finding, the Board agent dismissed UAPD's severance petition for lack of jurisdiction on December 28, 2009.

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

DISCUSSION

Under PERB Regulation 61000,² a party may file a representation petition with PERB when a local agency has no applicable representation rule. (*County of Siskiyou/Siskiyou County Superior Court* (2010) PERB Decision No. 2113-M.) In *County of Siskiyou/Siskiyou County Superior Court, supra*, the Board held that PERB has jurisdiction over a representation petition, and thus PERB regulations will apply, 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.

In this case, the Board agent dismissed UAPD's severance petition based on the ALJ's proposed decision in case number LA-CE-518-M, which found that severance could be accomplished via section 9 of the County's ERR. The Board recently affirmed this finding in *County of Orange* (2010) PERB Decision No. 2138-M. Because the County has a local rule that provides for severance, we affirm the Board agent's dismissal of UAPD's severance petition for lack of jurisdiction.

ORDER

The severance petition in Case No. LA-SV-161-M is hereby DISMISSED.

Members McKeag and Wesley joined in this Decision.

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 61000 states: "Except as otherwise ordered pursuant to Chapter 1, or as provided for by Public Utilities Code, Division 10, Part 16, Chapter 5 (section 105140 et seq.), the Board will conduct representation proceedings and/or agency fee rescission elections under 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."

