



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

SAN DIEGO METROPOLITAN TRANSIT
SYSTEM,

Employer,

and

TRANSIT ELECTROMECHANICS UNION,

Petitioner,

and

PUBLIC TRANSIT EMPLOYEES
ASSOCIATION,

Exclusive Representative.

SMCS Case No. 17-3-137

Case No. LA-PC-16-M

PERB Order No. Ad-460-M

January 23, 2018

Appearance: Juan G. Gonzalez, President, for Transit Electromechanics Union.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on Transit Electromechanics Union's (TEU) appeal from an administrative determination by the Board's Appeals Office. The Appeals Office rejected TEU's appeal from a determination by the State Mediation and Conciliation Service (SMCS), after concluding that SMCS's determination was not appealable.

Based on our review of TEU's appeal and the entire record in this matter, we reverse the administrative determination and remand the matter to the Appeals Office for further processing.

BACKGROUND

On October 2, 2017, TEU filed with SMCS a petition for certification to represent a unit of employees of the San Diego Metropolitan Transit System (System).

On October 6, 2017, SMCS issued an administrative determination denying the petition. The administrative determination noted that TEU was seeking to sever a smaller unit from an existing bargaining unit represented by the Public Transit Employees Association (Association), and concluded that this type of petition was unavailable under the federal authority that must be applied to representation petitions of this type under Public Utilities Code (PUC) section 120505 and PERB Regulation 93005.¹

On October 12, 2017, TEU filed its appeal of SMCS's administrative determination, arguing that its petition was a "Craft Severance Petition," which is authorized by federal law.

On October 24, 2017, the Appeals Assistant rejected TEU's appeal on the basis that "PERB does not have jurisdiction over violations of federal law." On November 1, 2017, the Appeals Assistant issued another letter, citing the same ground for rejecting the appeal, but this time notifying TEU of its right to appeal the administrative determination to the Board itself.

On November 3, 2017, TEU filed its appeal from the Appeals Assistant's administrative determination, arguing that SMCS's determination is appealable under PERB Regulation 93025, subdivision (d).

DISCUSSION

The System is a transit district established by PUC section 120000 et seq., and its labor relations are governed by sections 120500-120509. Accordingly it is not subject to the

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

Meyers-Milias-Brown Act (MMBA), which applies to most local public agencies.² (See *San Diego Trolley, Inc.* (2007) PERB Decision No. 1909-M.) The System’s enabling statute gives SMCS jurisdiction to investigate and issue determinations on questions concerning representation. (PUC, § 120505.)³ In doing so, SMCS is directed to “be guided by relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended.” (*Ibid.*)

SMCS was transferred to PERB from the Department of Industrial Relations in 2012. (Stats. 2012, ch. 46, § 11.) Following this transfer, PERB issued regulations governing

² The MMBA is codified at Government Code section 3500 et seq.

³ In its entirety, PUC section 120505 provides:

If there is a question of whether a labor organization represents a majority of employees or whether the proposed unit is the appropriate unit for collective bargaining, the question shall be submitted to the State Conciliation Service for disposition. The service shall promptly hold a public hearing, after due notice to all interested parties, and shall thereupon determine the unit appropriate for the purposes of collective bargaining. In making such determination and in establishing rules and regulations governing petitions and the conduct of hearings and elections, the service shall be guided by relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended.

The service shall provide for an election to determine the question of representation and shall certify the results to the parties. Any certification of a labor organization to represent or act for the employees in any collective-bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within such collective unit exists until the lapse of one year from the date of certification or the expiration of any collective-bargaining agreement, whichever is later, except that no collective-bargaining agreement shall be construed to be a bar to representation proceedings for a period of more than two years.

SMCS's handling of cases arising under the various PUC transit district statutes, including the System's. (PERB Regs. 93000-93080.)

Among those regulations is PERB Regulation 93005, which allows the filing of petitions for certification and decertification. A petition for certification is defined as "a petition which would arise under paragraph (1)(A)(i) and (1)(B) of Section 9C of the Labor-Management Relations Act." (PERB Reg. 93005, subd. (a).) A petition for decertification is defined as "one of the type which would arise under paragraph (1)(A)(ii) of Section 9(c) of the Labor-Management Relations Act." (PERB Regulation 93005, subd. (b).)

The initial processing of such petitions is guided by PERB Regulation 93025. Subdivision (c) of that regulation allows SMCS to dismiss the petition without a hearing if it determines either "that there is no reasonable cause to believe that there exists a question whether a labor organization represents a majority of employees of the district in an appropriate unit," or "that the petition has not been filed in accordance with these regulations." (PERB Reg. 93025, subd. (c).) Subdivision (d) states that: "Any determination made by the [SMCS] Supervisor pursuant to this Section may be appealed to the Board itself in accordance with Sections 32350 through 32380 or, if applicable, in accordance with and subject to the limitations provided in Section 32200." (See also *San Diego Metropolitan Transit System* (2016) PERB Order No. Ad-441-M, p. 2, fn. 1.)

Based on PERB Regulation 93025, we conclude that SMCS's administrative determination was appealable. SMCS determined that TEU's petition was not a proper decertification petition under subdivision (b) of PERB Regulation 93005 because federal law precludes a severance petition, and accordingly dismissed the petition without conducting a hearing. Whatever the merits of that determination, it is unquestionably a "determination made

by the [SMCS] Supervisor pursuant to [PERB Regulation 93025].” (PERB Reg. 93025, subd. (d).) It may therefore be appealed to the Board itself. (*Ibid.*) We remand the matter to the Appeals Office and will issue a decision on the merits of TEU’s appeal after the other parties have had an opportunity to respond to the appeal. (PERB Reg. 32375.)

ORDER

The Appeals Office’s administrative determination in Case No. LA-PC-16-M is hereby REVERSED and the matter is remanded to the Appeals Office for further processing.

Chair Gregersen and Member Banks joined in this Decision.