

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION
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SACRAMENTO, CA 95811-6614



November 21, 2008

SENT VIA FACSIMILE AND U.S. MAIL

Judge Shawn P. Cloughesy
Administrative Law Judge
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

Re: State of California (Department of Personnel Administration)
Case No. SA-SV-171-S

Dear Judge Cloughesy:

This letter represents the Department of Personnel Administration's (DPA) Amended Position Statement in the above case. DPA amends its position from neutral to oppose the severance petition for the reasons set forth below.

AMENDED POSITION

DPA contends the severance petition should not be granted because:

1. There are job classifications included in the severance petition that are not peace officers within California Penal Code, Part 2, Title 3, Chapter 4.5, commencing with Section 830.
2. There is a strong community of interests shared by all current Bargaining Unit 7 employees,
3. Severing the proposed classification will result have a negative effect on the meet and confer relationship between the State and Bargaining Unit 7, including a proliferation of units.

STATEMENT OF FACTS

On August 20, 2008, POC filed a severance petition with PERB proposing a new bargaining unit. The severance petition requested severance of all job classifications within Bargaining Unit 7, which must be filled by peace officers within the meaning of California Penal Code, Part 2, Title 3, Chapter 4.5, commencing with Section 830. California Statewide Law Enforcement Association (CSLEA) is the incumbent exclusive representative for all classifications in Bargaining Unit 7.

On September 5, 2008, CSLEA filed an Opposition to Severance. On October 8, 2008, DPA filed a neutral Position Statement regarding the severance position. A prehearing conference is scheduled for November 24, 2008.

DISCUSSION

I. The Severance Petition includes Non-Peace Officers.

POC has proposed a unit consisting of classifications filled by peace officers within the meaning of California Penal Code, Part 2, Title 3, Chapter 4.5, commencing with Section 830 (Peace Officer Classifications). However, POC has included non-peace officer classifications in the proposed unit, including Supervising Museum Security Officer, class code 1998 and Museum Security Officer, class code 1992. POC proposed unit is defective because the proposed unit would not consist entirely of peace officers.

II. There is a Strong Community of Interest between Peace Officers and Non-Peace Officer in Unit 7.

PERB held that for the severance of an original unit to be appropriate, the proposed unit must be, after consideration of all the factors, *more* appropriate than the existing unit. (Emphasis added.) (*State of California (Department of Personnel Administration) (1993) PERB Decision No. 1025-S.*) (*State of California (Department of Personnel Administration) (1990) PERB Decision No. 988-S.*) There is a presumption the existing unit is the appropriate unit. (*State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S.*) Therefore, in order for PERB to grant the severance petition, POC must rebut the presumption that the existing unit is more appropriate than the proposed unit. (*State of California (Department of Personnel Administration) (1993) PERB Decision No. 1025-S.*) POC will be unable to rebut the presumption because of the strong community of interests that exist between peace officers and non-peace officers in Unit 7.

The community of interests among employees is defined by several sub-factors, including the extent to which employees perform functionally-related services or work towards common goals, the history of employee representation in the agency involved and in similar employment, the extent to which employees have common skills, working conditions, job duties, educational or training requirements and common supervision. (*Aaron Report*¹ at p. 88.)

In the original unit determination, PERB held the activities performed by the employees in Unit 7 included protecting state land and buildings, furnishing emergency services, issuing licenses or permits, arresting individuals violating penal or administrative laws, and protecting the public from various fraudulent practices and schemes. (*Unit Determination for the State of California, (1979) PERB Decision No. 110-S.*) PERB held that the employees in Unit 7 shared common concerns, including hours of work, uniform allowances, holiday pay, standby pay, compensation for court appearances, vacation scheduling, mileage allowances, retirement benefits, and physical examinations. (*Id.* at 30).

Little has changed for the employees in Unit 7 since PERB made the unit determinations. The community of interest is still very strong between peace officers and non-peace officers when

¹ *The Final Report of the Assembly Advisory Council on Public Employee Relations* (1973). The report is named after Benjamin Aaron, Chairman.

comparing job specifications. Peace officers and non-peace officers share common skills, working conditions, duties, educational and training requirements, and supervision. Most, if not all, Unit 7 employees are responsible for enforcing laws and regulations in their given field.

Employees within the proposed unit share a strong community of interest with other Unit 7 employees. DPA opposes the severance petition because of this strong community of interests.

III. The Proposed Unit would have a Detrimental Effect on the Meet and Confer Relationship.

The meet and confer relationship between the State and the bargaining unit is another major fact PERB considers in determining if a severance is appropriate.² The meet and confer relationship includes bargaining history, representation of the employees that fall within the severance petition, and the impact of a proliferation of units. (*Aaron Report* at pp. 88-89.)

CSLEA (formerly CAUSE) has been Unit 7's exclusive representative since the formation of the unit in 1981. The State and CSLEA have successfully negotiated Unit 7 contracts for 1999, 2001, 2002, 2003, and 2005. Negotiations for a new contract are ongoing. PERB has addressed the bargaining history of Unit 7 before and found evidence of a stable relationship between CAUSE and DPA existed. (*State of California (Dept. of Personnel Administration)* (1989) PERB Decision No. 773-S.) The stable bargaining relationship between the State and CSLEA would be disrupted by the severance of Unit 7.

Peace officers are well represented in Bargaining Unit 7 negotiations. A review of bargaining notes suggest peace officers received more than adequate representation in the bargaining process both in terms of time spent in the negotiation process and pay increases. There is "no showing that the interests of the petitioned-for employees have been trampled upon or ignored, or that their representational rights have been abrogated because of the existing unit structure." (*Ibid.*)

The proposed unit will lead to a proliferation of units. The *Aaron Report* concluded a proliferation of bargaining units has constituted more of a problem and an impediment to effective collective bargaining than has the establishment of too few bargaining units. (p. 84). Following the advice from the *Aaron Report*, PERB refused to grant separate units paralleling occupational classification because it could lead to an undue proliferation of units, creating an adverse impact on the meet and confer relationship. (*Unit Determination for the State of California*, (1979) PERB Decision No. 110-S.) The impact of creating a new peace officers only unit has the potential to open the door to other law enforcement employees attempting to create their own unit. This leads to a dilution of the bargaining process.

The creation of a new bargaining unit would have a detrimental impact on the meet and confer relationship and lead to a proliferation of units. DPA opposes the severance petition because the on-going stable bargaining relationship for all current Bargaining Unit 7 employees would be disrupted. Granting of the petition would also lead to a proliferation of units.

² Cal. Gov. Section 3521(b)(5)

CONCLUSION

DPA opposes the severance petition filed by POC because the severance petition includes non-peace officer classification, there is a strong community of interest between peace officers and non-peace officers in Unit 7, and the proposed unit would have a detrimental effect on the meet and confer relationship between the State and the bargaining units, including a proliferation of units.

Should you require any further information, or have any questions, please feel free to contact me at (916) 323-7998.

Sincerely,

Shannan J. Truong
Legal Counsel

SJT:alv

Attachment

cc: Kristine Rodrigues
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