



County of El Dorado, Department of Human Resources

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To: Michael Eggener, Operating Engineers Local Union No. 3, Senior Business Representative
Michael DeAnda, Operating Engineers Local Union No. 3, Business Representative

From: Tameka Usher, Director of Human Resources

Subject: MMBA Representation Petition Response

Background

On September 10, 2020, I received a Meyers-Milias-Brown Act (MMBA) Representation Petition and supporting documents on behalf of Joshua Courtney, a County employee who is named in the petition. The petition requests to decertify Local 1 from representing a total of fifty-two (52) employees allocated to four (4) classifications as noted below, and to certify the creation of a new bargaining unit titled "Public Safety Support Unit", which would be represented by the Operating Engineers Local Union No. 3 (OELU3). (Appendix A) The classifications at issue are:

- Sheriff's Security Officer
- Sheriff Technician (I/II)
- Sheriff's Property Evidence Technician
- Department Systems Analyst

Below are specific communications and dates related to the review of your request:

- September 22, 2020, I received the amended MMBA Representation Petition.
- October 7, 2020, the Public Employment Relations Board issued a Notice of Withdrawal and Closure of Case, because the County's Employer-Employee Relations Resolution (EERR) covers this severance petition, in which OELU3 is seeking to modify the General Employees and Professional Employees classifications represented by Local 1.
- October 12, 2020, I sent a memo clarifying that some information was missing that is required by the EERR, specifically Article II, Section 2.01 (a-J) - Filing of Recognition of Petition by Employee Organization.

- The requested certified copies of the Employee Organization's constitution and bylaws have since been received.
- October 20, 2020, I had a telephone conversation with Michael Eggener that addressed some gaps in OELU3's petition, specifically a statement addressing the EERR, Article II, Section 2.07 - (a-J) - Policy and Standards for Determination of Appropriate Bargaining Units.
- October 22, 2020, I received an email that contained a letter of clarification per the phone conversation on October 20, 2020. With the understanding that OELU3 has provided the final clarification related to their obligation as noted in the EERR, the petition was formally complete. Therefore, my analysis of this request is based on the various documents submitted by OELU3 and EERR, Article II, Section 2.07 - (a-j) - Policy and Standards for Determination of Appropriate Bargaining Units.
- November 24, 2020, I provided OELU3 a tentative denial to the MMBA Representation Petition. The memo also included an opportunity for OELU3 to meet and consult on this matter. (Appendix B)
- December 8, 2020, OELU3 and the County held the meet and consult session. In addition, I also received a written response to the tentative denial. (Appendix C)

Analysis

To determine the appropriateness of the requested decertification and appropriateness of the proposed bargaining unit, I analyzed the proposed bargaining unit pursuant to the criteria set forth in EERR section 2.07. I have also considered the union's response to the tentative determination. The portions of section 2.07 that are applicable to the analysis and the union's response submitted on December 8, 2020 are quoted below.

Consideration of Union's Response

OELU3 believes the County's tentative denial of the employees right to request changing union representation violates the MMBA, which states, "Employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purposes of representation on all matter of Employer-Employee Relations including but not limited to wages, hours, and other terms and conditions of employment. Employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of the exercise of these rights." The current matter concerns unit determination, which the MMBA addresses as follows: "*Unit determinations* and representation elections shall be determined and processed *in accordance with rules adopted by a public agency in accordance with this chapter.*" (Govt. Code § 3507.1(a); emphasis added). Regardless

of the outcome of this severance petition, the employees in question will not be prevented from voting with the other members of whichever bargaining unit to which they are assigned on which union organization will represent such bargaining unit. Accordingly, the County remains in compliance with this provision of the MMBA. The County will analyze the present question, i.e., the appropriateness of the proposed and current bargaining units for the classifications cited, in accordance with the terms of the EERR.

In addition to this reference of the MMBA, OELU3 provided two specific responses regarding the tentative denial: (1) County efficiency, and (2) Split Job Classifications.

- County efficiency – *“Regardless of who represents this group of employees, the County would still be required to support whatever employees issues would arise regardless if the employees moved to OELU3. It would create an additional bargaining table that would be insignificant issue for the County as the approach to negotiations has been all groups are basically given the same proposals. This group of employee’s submitted the petition requesting a change of labor representations as they are not being provided the representation their specific job classification needs..... Because Local 1 has the largest group of employees covered by a very broad number of job classifications against does not mean the employees are receiving the labor representation they want...”*
 - **County’s response:** OELU3’s response essentially goes to weight, rather than denying the facts discussed in the original analysis. As noted in the analysis below, the creation of an additional bargaining unit containing four (4) classifications and approximately fifty-two (52) employees would clearly decrease efficiency for the County, given that these classes are currently represented by a larger bargaining unit that would still exist after the separation. The creation of a Public Safety Support Unit would create an additional bargaining table that would most certainly result in additional general fund costs (representation costs, additional employee time within Human Resources to both support bargaining and manage ongoing labor relations issues, etc.). Whether or not this is “insignificant” is a subjective consideration. The County does not maintain that the creation of an additional bargaining unit is itself dispositive; however, other factors must be more compelling to overcome the added inefficiency. In addition, it is incorrect that the County gives the same proposals to each bargaining unit. Although the County may have certain common goals throughout its labor negotiations, it is nonetheless obligated to separately negotiate in good faith with each bargaining unit. Experience has shown that this process can take many months with each bargaining unit. The resulting MOUs then contain numerous provisions related to wages, differentials, allowances, etc., that are unique to that bargaining unit, even if much of the non-controversial “boilerplate” language is similar among the MOUs.
- Split Job Classification – *“The County’s position that the creation of proposed bargaining unit would split the representation of the job classification. Again, these job*

classifications are already split. Very similar to the Corrections unit. The lieutenant job classification is not represented by OE# nor does the DSA represent the Correctional Officer. Similarly, with the Department System Analyst position. The County states they cross over into a community of bargaining units. This is already happening...”

- **County’s response:** This statement is incorrect. The job classifications in question are not already split. In fact, as noted below, the classification series in question (Sheriff’s Technician I/II & Sr. Sheriff’s Technician; Department System Analyst & Sr. Department Systems Analyst; Sheriff’s Property Evidence Technician & Sr. Sheriff’s Property Evidence Technician) are represented by Local 1. In addition, the split representation of the Correctional classification and the Correctional Lieutenant is compliant with section 2.07(j) of the EERR. OELU3’s response confuses the splitting of supervisory and non-supervisory units, which is common and recognized by the EERR, with the splitting of non-supervisory units within a job series. Senior-level employees may take lead roles on some tasks, but they do not supervise other employees. Correctional Lieutenants, though, have significant management responsibilities. Accordingly, units below the supervisory level, including entry, journey, and senior levels, should be kept together for representation purposes.

Revised Unit Determination Analysis

As noted above and in Appendix C, OELU3’s response to the tentative denial only addressed two areas in EERR section 2.07. As noted below, there are several specific reasons as to why I do not support the creation of a Public Safety Support Unit with representation for the Sheriff’s Security Officer, Sheriff’s Technician (I/II), Sheriff’s Property Evidence Technician, and Department Systems Analyst. The analysis remains largely the same following consideration of OELU3’s response, and is described below.

1) The efficient operations of the County and its compatibility with the primary responsibility of the County and its employees to effectively and economically serve the public, and

- The creation of a small bargaining unit containing four (4) classifications and approximately fifty-two (52) employees would decrease efficiency for the County, given that these classes are currently represented by other, larger bargaining units which would still exist after the separation. This would create an additional bargaining table that would most certainly result in additional general fund costs (representation costs, additional employee time within Human Resources to both support bargaining and manage ongoing labor relations issues, etc.). The request also fragments the Sheriff’s Technician classification series (I, II, and Sr.) into two different bargaining units that will be represented by two different groups. This is because the authorization for representation only has signatures of employees from the Sheriff’s Technician I and II

classifications and the MMBA Representation Petition does not reference the Sr. Sheriff's Technician. A similar fragmentation could occur with the Sheriff's Property Evidence Technician series, because the Sr. Sheriff's Property Evidence Technician is also not included in the petition. However, there are no current allocations for the Sr. Sheriff's Property Evidence Technician classification.

2) Providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest.

In considering whether classifications share an identifiable community of interest, the following factors shall be considered:

- a. Similarity of the work performed, required qualifications, level of responsibility, and the general working conditions.

Sheriff's Technician (I/II)- These classifications are specific to the Sheriff's Office and perform a variety of duties that are administrative, programmatic, and technical in nature. While some of these are certainly specific to the Sheriff's Office, including inmate booking and monitoring of the jail's entrance and exit, these classifications also perform administrative duties that are performed County-wide, such as processing legal documents, report processing, warrants, etc.; functioning as a receptionist; handling FMLA, injury and illness, workers' compensation, and fleet; and also perform a variety of general clerical duties. This general administrative work and legal process work is consistent with other County classifications currently represented by Local 1.

- o Furthermore, even though the Sheriff's Technician classification is unique to the Sheriff's Office, it is functionally similar to the Administrative Technician classification aside from the subject of the work. The Administrative Technician classification is defined as follows: "Under general direction, performs a variety of responsible paraprofessional, technical, administrative, and secretarial support duties requiring the application of procedural, program, and compliance knowledge in support of a department, division, or program; assumes ongoing, technical responsibilities specific to area of assignment; coordinates assigned programs, projects, and services with other departments, divisions, and outside agencies; performs research and routine analysis on a wide variety of special projects; and performs related work as required."
- o Department Systems Analyst- This classification is not used exclusively in the Sheriff's Office; the classification is also used in the District Attorney's Office and the Health and Human Services Agency. This classification performs a variety of professional, technical, and analytical duties in the operation of large complex, stand-alone department-specific computer system(s); analyzes department systems including applications, operating systems, hardware, networking with outside systems/agencies, and system programming requirements. There are significant similarities with the duties and responsibilities performed by other information technology classifications, such as

Information Technology Analyst, Information Technology Specialist, Information Technology Department Coordinator, and Information Technology Customer Support Specialist assigned to the Department of Information Technologies or other County Departments, which all have a history of being represented by Local 1. Duties common to these classifications include installing and maintaining computer systems, servers, and software; help desk functions (provides second- or third-level technical assistance); assessing, investigating, troubleshooting, evaluating, and resolving difficult computer hardware, software, and peripheral equipment problems; providing training to end users on the use of hardware and software; and analyzing customer and enterprise infrastructure network and/or information security systems requirements.

Sheriff's Property Evidence Technician- This classification is specific to the Sheriff's Office. The classification performs a variety of clerical and technical tasks related to the receipt, storage, and disposal of property and evidence in the Sheriff's Office. However, the same functional responsibilities in terms of evidence management are also assigned to the District Attorney's Office, albeit a different classification (Investigative Assistant). The investigative assistant classification is assigned to the GE bargaining unit that is represented by Local 1.

Sheriff's Security Officer- This classification is specific to the Sheriff's Office. This classification enforces security at County courthouse buildings. Despite being a unique classification to the Sheriff's Office, the current bargaining unit (Local 1) represents a variety of unique classifications encumbered by a small group of employees County-wide or specific to the Sheriff's Office. These include classifications such as Sheriff's Training Coordinator, Sheriff's Fiscal Assistant, Telecommunications Technician, Traffic Operations Technician, etc.

b. History of representation in the County; except that no bargaining unit shall be deemed appropriate solely on the basis of the extent to which employees in the proposed bargaining unit have organized.

- Local 1 has represented all four (4) classifications included in the MMBA Representation for Petition since their creation.

c. Consistency with the organizational patterns and structure of the County.

- Details regarding the organization patterns and structure are discussed below in section e.

d. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of bargaining units.

- Department Systems Analyst- The petition indicates five (5) employees. However, there are a total of seven (7) employees County-wide within this classification, two (2) of which are not assigned to the Sheriff's Office.

- In addition, the petition does not include the Sr. Department Systems Analyst classification. (There are no current allocations for this classification.)
- Sheriff's Technician (I/II)- The petition indicates thirty-three (33) employees. However, the County's position allocation document indicates there are eleven (11) assigned to the Sheriff Technician I and twenty-three (23) assigned to the Sheriff Technician II, compromising thirty-four (34) total positions. Although not specifically listed, it is my assumption that the representation of thirty-three (33) employees refers to the aggregate of the Sheriff's Technician I and Sheriff's Technician II classifications.
 - There is also a Sr. Sheriff's Technician classification (not included in the petition) which currently has five (5) employees.
- Sheriff's Property Evidence Technician- There are currently four (4) employees that hold this classification, all within the Sheriff's Office. However, the petition does not include the Sr. Sheriff's Property Evidence Technician classification. (There are no current allocations for this classification.)
- Sheriff's Security Officer- There are currently ten (10) employees that hold this classification.

e. Effect on the classification structure and impact on the stability of the employer employee relationship of dividing single or related classifications among two (2) or more bargaining units.

- Three (3) of the classifications requested will have a direct effect on the classification structure and employer-employee relations. As stated, the Department Systems Analyst is a County-wide classification used in multiple departments. The OELU3 petition only addresses the positions allocated to the Sheriff's Office. In addition, the duties and responsibilities have a direct community of interest with other classifications already represented by Local 1. Lastly, the request will fragment the Department Systems Analyst classification series by having the Department Systems Analyst represented by the proposed new bargaining unit, but having the Sr. Department Systems Analyst continue to be represented by Local 1.
- The Sheriff's Technician (I/II) are classifications specific to the Sheriff's Office, but many of the general administrative and legal functions are also performed by County-wide classifications that are used in various departments, which creates a direct community of interest. In addition, this request will fragment the Sheriff's Technician classification series. As requested, the Sheriff's Technician I/II will be represented by the proposed new bargaining unit, but the Sr. Sheriff's Technician will continue to be represented by Local 1.
- The Sheriff's Property Evidence Technician is a classification specific to the Sheriff's Office, but nearly identical duties and responsibilities are also performed by a different classification that would still be represented by Local 1. In addition, this request will fragment the Sheriff's Property Evidence Technician classification series. As requested,

the Sheriff's Property Evidence Technician will be represented by the proposed new bargaining unit, but the Sr. Property Evidence Technician will continue to be represented by Local 1.

- Transferring the Sheriff's Security Officer would not have an effect on our classification structure. However, given the issues with changing the representation for the Department Systems Analyst, Sheriff's Technician I/II, and Sheriff's Property Evidence Technician, only changing the representation of the Sheriff's Security Officer from Local 1 to OELU3 via the Public Safety Support Unit would result in an additional bargaining unit consisting of just one (1) classification and ten (10) employees.

f. Supervisory employees should not be placed in a bargaining unit with non-supervisory employees.

- Not applicable, given the scope of petition.

g. Management employees should not be placed in a bargaining unit with non-management employees.

- Not applicable, given the scope of petition.

h. Confidential employees should not be placed in a bargaining unit with non-confidential employees.

- Not applicable, given the scope of petition.

i. Professional employees shall not be required to be included in the same bargaining unit with non-professional employees.

- Not applicable, given the scope of petition.

j. Peace officers shall not be required to be included in the same bargaining unit as non-peace officers.

- Not applicable, given the scope of petition.

Findings of Fact

Given the analysis herein, the following is determined:

- The creation of a small bargaining unit containing four (4) classifications and approximately fifty-two (52) employees would decrease efficiency for the County, given that a larger bargaining unit, which currently represents these classifications, would still exist after the separation. Communities of interest exist between the Department Systems Analyst, Sheriff's Technician (I/II), and Sheriff's Property Evidence Technician classifications as well as other classifications currently represented by Local 1.

- The creation of the proposed bargaining unit would split the representation of the Department Systems Analyst classification series between Local 1 and OELU3.
- The petition will create a fragmentation of the Department Systems Analyst, Sheriff's Technician (I/II), and Sheriff's Property Evidence Technician classification series.
- Changing the representation of the Sheriff's Security Officer classification would not have an effect on our classification structure. However, given the issues with changing the representation for the other requested classifications, changing the representation of just the Sheriff's Security Officer classification would result in an additional bargaining unit consisting of just one (1) classification and ten (10) employees.
- Since their creation, Local 1 has represented all four (4) classifications.

Recommendation

Based on the criteria set forth in the EERR section 2.07 and the findings of fact, the OELU3's petition for representation does not support the creation of a Public Safety Support Unit with representation for the Sheriff's Security Officer, Sheriff's Technician (I/II), Sheriff's Property Evidence Technician, and Department Systems Analyst. Given such, the request is denied.

Consistent with section 2.011 of the EERR, you may appeal to the Board of Supervisors by filing a written request with the Clerk of the Board of Supervisors and copy to me, the Employee Relations Officer, within fifteen (15) days hereof.

Appendix A

Appendix B

Appendix C
