

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



COUNTY OF SISKIYOU,

Employer,

and

SISKIYOU COUNTY EMPLOYEES'
ASSOCIATION,

Employee Organization,

and

SISKIYOU COUNTY EMPLOYEES'
ASSOCIATION/AFSCME,

Employee Organization.

SISKIYOU COUNTY SUPERIOR COURT,

Employer,

and

SISKIYOU COUNTY EMPLOYEES'
ASSOCIATION,

Employee Organization,

and

SISKIYOU COUNTY EMPLOYEES'
ASSOCIATION/AFSCME,

Employee Organization.

Case No. SA-AC-63-M

PERB Decision No. 2113-M

June 7, 2010

Case No. SA-AC-64-C

Appearances: Liebert, Cassidy & Whitmore by Adrianna E. Guzman, Attorney, for County of Siskiyou; Anderson, Bradley & Krant by Carolyn A. Anderson, Attorney, for Siskiyou County Employees Association; Beeson, Tayer & Bodine by Andrew H. Baker, Attorney, for Siskiyou County Employees' Association/AFSCME.

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 exceptions filed by the Siskiyou County Employees' Association (SCEA), and on cross-exceptions filed by the Siskiyou County Employees' Association/AFSCME (SCEA/AFSCME) and the County of Siskiyou (County), to the proposed decision of an administrative law judge (ALJ). The two petitions filed by SCEA in this matter sought to amend SCEA's certification to reflect a purported disaffiliation with the American Federation of State, County and Municipal Employees (AFSCME). The ALJ dismissed both petitions, concluding that SCEA lacked substantial continuity of representation and identity with SCEA/AFSCME as it existed prior to the purported disaffiliation.

The Board has reviewed the proposed decision and the record in light of SCEA's exceptions, SCEA/AFSCME and the County's cross-exceptions, the parties' responses to exceptions and cross-exceptions, and the relevant law.¹ Based on this review, the Board affirms the dismissal of the petitions for the reasons discussed below.

FACTUAL BACKGROUND

SCEA's Affiliation with AFSCME

SCEA has existed since the 1970s. In 1991, the SCEA Executive Board contacted AFSCME District Council 57 about affiliation. At the time, SCEA represented the County's miscellaneous, professional, probation, and management/supervisory/confidential bargaining units. Because at that time the superior courts were administered by the counties, the Court's employees were part of these County bargaining units.

¹ The Siskiyou County Superior Court (Court) did not participate in the hearing and did not file exceptions, cross-exceptions or a response to exceptions or cross-exceptions with the Board.

Sometime in mid-1991, District Council 57 Executive Director George Popyack (Popyack)² and Associate Director Linda Gregory (Gregory) met with the SCEA Executive Board and 15-20 County employees in the County board of supervisors chambers in Yreka. Gregory and Popyack discussed several benefits of affiliation, including protection against raiding by other American Federation of Labor - Congress of Industrial Organizations unions, collective bargaining assistance, and representation in grievances and disciplinary hearings. They also mentioned providing a business agent at a local office in Yreka.

Gregory and Popyack testified they also told attendees that after a four-year trial period, affiliation was permanent and could not be unilaterally dissolved by the local. Both recalled an exchange between Popyack and SCEA President Joe Allison (Allison) on the irrevocability and/or perpetuity of affiliation. Current SCEA Business Agent Tom Dimitre (Dimitre), SCEA Secretary-Treasurer Ann Whipple (Whipple), and current SCEA President Janice Rushton (Rushton), all of whom attended the 1991 meeting, testified there was no discussion of the permanent status of the affiliation following expiration of the four-year trial period.

Following one or two additional meetings between Gregory and the SCEA Executive Board,³ Gregory and Popyack drafted an affiliation agreement. Most of the agreement contained “boilerplate” language from other AFSCME affiliation agreements. The agreement also contained several provisions specific to the SCEA affiliation: maintenance of SCEA’s non-profit corporate status; membership and jurisdiction; four-year dues phase-in; training; a local Yreka office; and District Council 57 staff assistance in negotiations. Article XVI, Ratification and Term, provided that the agreement would become “perpetual at the end of the

² Popyack was and is also an International Vice President of AFSCME.

³ Whipple and Rushton testified that neither SCEA President Allison nor District Council 57’s Gregory discussed the perpetual and/or irrevocable nature of the affiliation at these meetings.

initial four (4) [year] period,” but also provided that SCEA would have the right to terminate the agreement “by submitting the issue to a membership secret ballot vote at any time after ratification.” The affiliation agreement was signed on September 21, 1992, by SCEA President Allison, Secretary-Treasurer Whipple, and Vice President Lyn Bridwell. The copy of the agreement admitted into evidence contains no signatures from AFSCME representatives.

Gregory prepared a charter application for SCEA contemporaneously with the affiliation discussions and documents. AFSCME International issued a local charter to “Siskiyou County, California, Employees Local 3899” on September 1, 1992.

Following affiliation, AFSCME District Council 57 leased a local office in Yreka and provided an AFSCME-employed business agent to work with SCEA/AFSCME. Several different business agents served County employees until AFSCME hired Dimitre as business agent in 1997. The business agent position was then part-time, three days/24 hours a week.

On January 1, 2001, pursuant to the Trial Court Employment Protection and Governance Act (Trial Court Act),⁴ employees of the Court ceased to be County employees and became employees of the Court. Accordingly, separate bargaining units for miscellaneous and professional Court employees were created. In May 2008, the County probation unit voted to decertify SCEA/AFSCME and be represented by an independent employee organization. As of the beginning of 2009, SCEA/AFSCME represented three County bargaining units (miscellaneous, management and professional) and two Court bargaining units (miscellaneous and professional).

⁴ The Trial Court Act is codified at Government Code section 71600 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

SCEA's Purported Disaffiliation from AFSCME

In October 2008, Dimitre learned about an internal AFSCME proposal to consolidate the two AFSCME offices in Humboldt and Siskiyou Counties.⁵ The proposal would reduce his weekly work hours from 32 to 10 and reduce the hours of Yreka Secretary Sherrie Bennett (Bennett) from 12 to six hours per week. Dimitre shared this information with SCEA/AFSCME Vice President Sharon Shepard (Shepard).

On November 18, 2008, Shepard sent an e-mail and letter, signed by all but two SCEA/AFSCME Executive Board members, to Popyack protesting the proposal as a “de facto abandonment of the Local” due to the reduction in representation services. Shepard sent copies of the e-mail and letter to the District Council 57 president and a vice president but the e-mails were returned as undeliverable. Shepard thereafter left two voice-mail messages for Popyack at District Council 57 headquarters asking to discuss the matter but received no response from Popyack or any other AFSCME official.

On January 23 and 24, 2009, Shepard, three other SCEA/AFSCME Executive Board members, Dimitre, and Bennett traveled to District Council 57 headquarters in Oakland to discuss the impact of the proposed reorganization on Siskiyou County. On January 23, Shepard addressed the District Council 57 Executive Board, read her November 2008 letter and pleaded with them not to proceed with the reorganization. The Executive Board nonetheless approved the reorganization. On January 24, Dimitre introduced the SCEA/AFSCME delegation to the AFSCME Council of Delegates, presented Shepard's letter, and urged a “no” vote on the budget. The budget was approved by a nine to seven vote. The reorganization combined the Humboldt and Siskiyou County assignments into one full-time

⁵ Another AFSCME business agent sent an e-mail describing the proposal to Dimitre. Attached to the email were minutes from a September 2008 District Council 57 finance subcommittee meeting.

business agent position serving both the Eureka and Yreka offices, and reduced the Yreka secretary's hours to six per week effective March 1, 2009. On the return trip to Yreka, the SCEA/AFSCME delegation discussed disaffiliation from AFSCME.

On January 28, 2009, Popyack offered Dimitre the full-time business agent position for the combined Humboldt-Siskiyou assignment. On February 9, Dimitre turned down the position because he was in law school. In the same e-mail, Dimitre protested that one business agent could not serve both locals, stating that "AFSCME risks losing both locals" if both were serviced by one business agent. Dimitre testified that he intended this comment to mean that disaffiliation of SCEA/AFSCME was a possibility.

On February 12, 2009, Dimitre appealed his job reassignment under the business agents' collective bargaining agreement with District Council 57 and requested a meeting between SCEA/AFSCME's Executive Board and the District Council 57 Executive Board. According to Dimitre's e-mail, the SCEA/AFSCME Executive Board wanted Popyack to know that "there is a strong likelihood that it will vote to disaffiliate with AFSCME" due to lack of adequate representation.

Popyack responded that he would convey the requests to the District Council 57 Executive Board. Popyack also directed that the SCEA/AFSCME President or other local officer represent the local in the future, as it was a conflict of interest for a District Council 57 employee to act as the representative of the local in disputes with Council 57.

After twice meeting and reviewing the affiliation agreement, the SCEA/AFSCME Executive Board voted unanimously on February 17, 2009, to disaffiliate from AFSCME. The same day, a newsletter was prepared and distributed to SCEA/AFSCME members announcing the vote, explaining the reasons for it, identifying options, and comparing remaining affiliated

with AFSCME to becoming independent. The newsletter advised members that an informational meeting about the disaffiliation vote would be held on February 20.

On February 18, 2009, flyers announcing the February 20 informational meeting and ballots were distributed to SCEA/AFSCME members.⁶ The SCEA/AFSCME Executive Board recommended a vote for disaffiliation effective March 1. The ballots contained two choices: Yes (favor disaffiliation) and No (against disaffiliation). The ballots contained instructions to mark, sign, and seal them, and return the ballots through inter-County mail, U.S. mail, and/or to drop them off or put them in the mail slot at the Yreka office. The deadline for return of ballots was February 27. Accompanying the flyers and ballots were new membership and dues deduction authorization forms with the employee organization's name listed as SCEA rather than SCEA/AFSCME.

Also on February 18, 2009, Popyack sent an e-mail to Dimitre asserting that Dimitre was actively involved in the SCEA disaffiliation attempt, had participated in the February 17 SCEA/AFSCME Executive Board meeting, produced a budget and arranged to work for SCEA after it disaffiliated from AFSCME, drafted employee dues deduction forms deleting references to AFSCME and redirecting dues to SCEA, and used AFSCME time and materials in these activities. Popyack further claimed that he and District Council 57 were not advised of SCEA/AFSCME's disaffiliation efforts nor of Dimitre's involvement in them.

Dimitre responded, denying that he advocated for and/or led SCEA/AFSCME's disaffiliation efforts and used AFSCME time or materials. He also claimed that his February 12 e-mail had notified Popyack that the SCEA/AFSCME Executive Board was considering disaffiliation. Dimitre and Popyack spoke by telephone that evening.

⁶ Also on February 18, Whipple sent an e-mail to the SCEA/AFSCME Executive Board asking for assistance in conducting the informational meeting because "it was inappropriate" for Dimitre "to participate or conduct the meeting due to his employment with AFSCME."

On February 19, 2009, Popyack sent e-mails to Dimitre and Bennett terminating their employment “immediately,” based on their active involvement in the effort by SCEA/AFSCME to disaffiliate from AFSCME, and unauthorized use of AFSCME time, materials, and information.

On February 20, 2009, the informational meeting on the disaffiliation vote was held at a site across from the Yreka office.⁷ SCEA/AFSCME Vice President Shepard addressed a group of 18 members. Dimitre answered questions Shepard could not, such as the difference between decertification and disaffiliation.

On February 23, 2009, Popyack sent an e-mail to the County personnel director with the affiliation agreement attached. He stated that an internal dispute had arisen between SCEA/AFSCME and District Council 57. Popyack advised the County that AFSCME had terminated Dimitre and Bennett and that they had no authority to speak for AFSCME or its affiliate, SCEA/AFSCME. He instructed the County to send all communications, including dues deductions, to the District Council 57 office in Eureka, and informed the County that the new SCEA/AFSCME business agent was Jim Smith (Smith), who would work out of the Eureka office. Popyack further stated that SCEA/AFSCME would fulfill its representation rights and obligations under the existing memorandum of understanding (MOU) until its expiration in 2011, and would object to any changes in its contractual rights unless the requirements of the contract and the County’s Employer-Employee Relations Policy (EERP) were met. The e-mail was copied to SCEA/AFSCME President Rushton and Business Agent Smith.

⁷ The meeting was relocated from the Yreka office because District Council 57 paid the rent and held the lease on the office.

Popyack and Smith were in Yreka on February 25 and 26, 2009. When they arrived at the SCEA/AFSCME office, the door was unlocked although computer and copier equipment were present. File cabinets were empty and records were missing. Popyack immediately changed the locks to the office.

Popyack and Smith also met with the County administrator, County counsel, and County personnel director over outstanding business for the three SCEA/AFSCME County bargaining units. Popyack introduced Smith to them as the new SCEA/AFSCME business agent. The County representatives agreed to continue to work with SCEA/AFSCME. On February 26, the County forwarded February 2009 dues deductions to the SCEA/AFSCME office in Eureka.⁸ Upon learning of the dispute between SCEA/AFSCME and District Council 57, the Court placed monthly dues deductions for its 40 employees who are SCEA/AFSCME members in an escrow account.

The disaffiliation ballots were counted at noon on February 27, 2009. All SCEA/AFSCME Executive Board members were present but one. Bennett read the members' names, and a vice president checked off the names on the envelope labels against a master list. The envelopes were handed to two other executive board members who opened them. Ballots were divided between Yes and No, and dues deduction forms were separated from the ballots. Five members of the executive board counted the ballots three times. The vote was 153 for disaffiliation and 12 against disaffiliation.

After the ballot count, the SCEA Executive Board sent a letter to Popyack and the District Council 57 president advising them of the vote to disaffiliate. The letter stated that this action was effective February 28 and that Vice President Shepard was designated as the

⁸ Assistant County Administrator Rose Ann Herrick (Herrick) testified that the County sent the dues deductions to Eureka following notice of Dimitre's termination on February 23 because it was continuing to deal with SCEA/AFSCME.

liaison between SCEA and AFSCME regarding disaffiliation. The letter was copied to the County personnel manager, the Court executive officer, and Dimitre, the “contracted Business Agent” for SCEA.⁹

In early March 2009, Popyack assigned Keith Uriarte (Uriarte), District Council 57 Director of Organizing, to work with SCEA/AFSCME to build infrastructure and membership. On March 10, Uriarte met separately with the Court executive officer, and the County administrator and Assistant County Administrator Herrick. In both meetings, Uriarte explained that his role was broader than the day-to-day operations handled by Business Agent Smith, and stated he would contact department heads before meeting with their employees.

Uriarte also told Herrick that he would request documents to analyze the County’s budget. Uriarte drafted a request for documents which Business Agent Smith subsequently submitted to the County. The County responded. On March 17, 2009, Uriarte made a presentation to the County board of supervisors, advising that SCEA/AFSCME would work with the County to resolve budget issues. On April 9, the County forwarded March 2009 dues deductions to SCEA/AFSCME in Eureka.

Administratorship of SCEA/AFSCME

Sometime after the disaffiliation vote, Popyack requested that AFSCME International place SCEA/AFSCME in administratorship. On April 15, 2009, the AFSCME International president appointed Western Region Director Flo Walker (Walker) as administrator and Uriarte as deputy administrator of SCEA/AFSCME pursuant to Article IX, Section 45 of the AFSCME International Constitution. The administrators were directed to take immediate possession of all books, records, and property of SCEA/AFSCME to ensure funds and assets were not dissipated. That same day, the AFSCME International president sent letters to each

⁹ Dimitre began employment as an SCEA business agent on February 27, 2009.

of SCEA/AFSCME's officers and executive board members advising that the local had been placed in administratorship, and directing them to turn over all books, records, funds, and other property of the local in their custody or control to the administrators. Also on April 15, the AFSCME International president sent a letter to the County administrator and Court executive officer advising that SCEA/AFSCME had been placed under administratorship and the administrators were the only authorized representatives for the local.

On that same day, the AFSCME International president sent letters to a bank and investment company in Yreka, referring to two SCEA/AFSCME accounts in each. The letters advised that: (1) the local was under administratorship; (2) the administrators were authorized to take possession of the local's funds and property; (3) the local's officers of record were not authorized to transact business for the local's funds and assets; and (4) any such transaction honored by the financial institution would subject it to liability. Uriarte personally delivered the letter to the bank, which froze SCEA/AFSCME's two accounts prior to the PERB hearing. As of the hearing dates, the funds remained at the bank.

Also on April 15, 2009, the AFSCME International president sent a letter to the AFSCME Judicial Panel chair referring the administratorship of SCEA/AFSCME to a hearing board under the AFSCME International Constitution. That same day, the Judicial Panel chair notified the SCEA/AFSCME officers and executive board members, Popyack, Administrator Walker, and Deputy Administrator Uriarte, that a hearing would be held on April 23 in Redding.¹⁰

¹⁰ Shepard and Whipple testified they had not seen any of the April 15 correspondence from AFSCME International regarding the administratorship prior to April 20, 2009, the first day of the PERB hearing.

SCEA and SCEA/AFSCME at the Time of the PERB Hearing

At the time of the PERB hearing, there had been no change in SCEA's officers, job stewards, negotiators,¹¹ political action committee members, or bylaws since the disaffiliation vote. Of the 14-member executive board, two members had changed and two were on medical leave.¹² SCEA's local office was now a post office box and its phone number had changed. SCEA had filed no documents seeking formal recognition or dues deduction pursuant to the County EERP or the Court's Employer-Employee Labor Relations Rules (Court Rules).

At the time of hearing, Dimitre was SCEA's business agent by contract, rather than as an employee of AFSCME District Council 57. Shepard had notified the County and the Court that SCEA had hired Dimitre as its business agent. The County had not dealt with Dimitre on SCEA matters since February 23, 2009, when Popyack informed the County personnel director that Dimitre was no longer the business agent for SCEA/AFSCME. Dimitre testified that he represented one Court employee in a disciplinary matter after the disaffiliation vote.

At the time of hearing, SCEA/AFSCME was operating under the administratorship imposed by AFSCME International. Walker and Uriarte, as the appointed administrators, were handling the local's business affairs. SCEA/AFSCME continued to receive dues deductions from the County at its Eureka office. SCEA/AFSCME continued to occupy the same AFSCME-leased office space in Yreka and continued to work with a business agent, Smith, who was employed by AFSCME. Both the County and the Court dealt with Smith on meet and confer and disciplinary matters involving the SCEA/AFSCME bargaining units.

Local Rules and MOUs

¹¹ There have been no negotiations since the disaffiliation vote because there are existing contracts between SCEA/AFSCME and the County and Court.

¹² One Board member was terminated and one resigned. They were replaced by two new members.

The County's EERP allows petitions for recognition, decertification, and unit modification but does not provide for amendment of certification of a recognized employee organization. An employee organization seeking formal recognition as the majority representative of employees in an appropriate bargaining unit must file a petition for recognition with the County employee relations officer. Formal recognition by the County board of supervisors may be granted voluntarily or following a secret ballot election. Petitions for decertification may be filed by an employee, group of employees, their representative, or an employee organization during the 30-day period before expiration of the MOU; a decertification petition may be accompanied by a petition for recognition by a challenging organization. An election is then conducted. Formal recognition remains in effect for one year following the date of recognition, and continues until decertification, unit modification, or violation of local rules by the employee organization.

The County EERP provides for dues check-off only to a formally recognized employee organization following permission of the board of supervisors for dues deduction from employee member paychecks. An employee's written authorization on a card provided by the County employee relations officer is required for dues deduction or cancellation of dues deduction.

Like the County's EERP, the Court Rules do not provide for amendment of certification but do allow petitions for recognition, decertification, and unit modification. The Court Rules do not contain a dues deduction provision.

The July 1, 2008 - June 30, 2011 MOU between the County and SCEA/AFSCME for the miscellaneous, professional, and management bargaining units was signed on July 25, 2008. The MOU defines "Employer" as the County, and the "Association" as SCEA/AFSCME. The authorized agents to administer the MOU are the county administrator

for the County, and the president and/or business agent for the Association. The recognition section provides that the Employer recognizes the Association as the only organization entitled to meet and confer for the three bargaining units.

The April 25, 2008 - December 31, 2011 MOU for the Court professional and miscellaneous bargaining units is between SCEA/AFSCME and the Court. The agreement defines "Employer" as the Court and "SCEA" as SCEA/AFSCME. The authorized agents for MOU administration are the Court personnel officer and the president and/or business agent of SCEA. The recognition article provides that the Court recognizes SCEA as the only organization entitled to meet and confer for the two bargaining units.

DISCUSSION

1. PERB's Jurisdiction Over SCEA's Petitions to Amend Certification

SCEA/AFSCME and the County filed cross-exceptions contending that PERB lacks jurisdiction over SCEA's petitions to amend certification. The County has adopted local rules governing representation pursuant to section 3507, subdivision (a) of the Meyers-Milias-Brown Act (MMBA),¹³ and the Court has adopted similar local rules pursuant to Trial Court

¹³ The MMBA is codified at Government Code section 3500 et seq. MMBA section 3507, subdivision (a), provides in full:

A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this chapter. The rules and regulations may include provisions for all of the following:

- (1) Verifying that an organization does in fact represent employees of the public agency.
- (2) Verifying the official status of employee organization officers and representatives.
- (3) Recognition of employee organizations.

Act section 71636, subdivision (a). Neither set of local rules contains a provision for amendment of certification of a recognized employee organization. Nonetheless, SCEA/AFSCME and the County assert that because the County and the Court have adopted local rules governing representation matters, PERB's amendment of certification regulations do not apply. This assertion is refuted by the plain language and legislative history of the relevant MMBA and Trial Court Act provisions.

Senate Bill (SB) 739, enacted by the Legislature in 2000, gave PERB jurisdiction over the MMBA effective July 1, 2001. The bill added MMBA section 3509, which sets forth the Board's authority under the statute. As enacted in 2000, subdivision (a) of that section read in full:

The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c).

(4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 3502.

(5) Additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment.

(6) Access of employee organization officers and representatives to work locations.

(7) Use of official bulletin boards and other means of communication by employee organizations.

(8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.

(9) Any other matters that are necessary to carry out the purposes of this chapter.

Trial Court Act section 71636, subdivision (a) contains identical language.

As part of its implementation of this newly-granted authority, PERB added section 61000 to its regulations.¹⁴ The original version of the regulation stated that PERB would only apply its regulations to local agency representation proceedings when a local agency adopted PERB's regulations as its own or when the parties to a particular case agreed to be bound by the applicable PERB regulations.

In 2003, the Legislature amended MMBA section 3509 to clarify the Board's authority with respect to local representation rules. Assembly Bill (AB) 1156 added the following sentence to subdivision (a) of section 3509:

Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule.

(Emphasis added.)

The Assembly Floor Analysis of AB 1156 sets forth the reasons for adding this sentence:

The sponsors also state that AB 1156 would among other things correct an apparent misinterpretation by PERB of the powers it is afforded by the Legislature. During the process of adopting regulations to implement SB 739 and specifically, Government Code Section 3509, PERB originally included provisions allowing it to order and run elections and to allow PERB regulations to fill in the gaps where local agencies do not have rules. The final regulations do not contain these provisions. But PERB has these powers. Current Government Code Section 3509(a) provides: 'The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.' Section 3541.3, in turn, grants extensive powers to PERB. In particular, PERB has the power to 'arrange for and supervise representation elections' and '[t]o adopt . . . rules and regulations to carry out the provisions and effectuate the purposes and policies' of MMBA (Government Code Section 3541.3(c), (g)). It is appropriate under the statutory

¹⁴ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

scheme for PERB to order and conduct elections and to issue regulations that apply when a locality has no rule. With respect to elections, under Section 3541.3 PERB should be able to conduct elections in appropriate circumstances if it determines that an initial election was improperly conducted.

Sponsors argue that with respect to the applicability of PERB rules, MMBA does permit localities to adopt reasonable rules (Government Code Section 3507). But, where the local agency has not adopted an applicable rule, PERB has full authority to apply its own regulations. Otherwise, by failing to adopt rules governing representation, a locality would effectively be withholding recognition in violation of MMBA. In such a situation, Government Code Section 3541.3 gives PERB the authority to use its rules to fill in the gaps in local rules in order to avoid a statutory violation. This is of little hardship to any locality, as simply by adopting their own reasonable rules, public agencies can avoid application of any PERB rule with which they disagree. It is altogether appropriate for PERB, after deferring to local agencies in the first instance, to ensure that rules are in place that adequately balances the rights of employees and employers.

(Assem. Com. on Public Employees, Retirement and Social Security, 3d reading analysis of Assem. Bill No. 1156 (2003-2004 Reg. Sess.) as amended May 7, 2003, p. 3, emphasis added.)

Based on both the plain language of MMBA section 3509, subdivision (a), and the legislative intent behind the 2003 amendment to that subdivision, it is clear that PERB regulations serve to “fill in the gap” when a local agency has not adopted a local rule on a particular representation issue.¹⁵

We find the same to be true under the Trial Court Act. In 2004, the Legislature enacted section 71639.1 of the Trial Court Act. Subdivision (b) of that section states in full:

¹⁵ After enactment of AB 1156, PERB amended Regulation 61000. The regulation currently states in full:

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.

The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this article and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a trial court has no rule.

Except for the words “trial court” in the last sentence, this subdivision is identical to MMBA section 3509, subdivision (a). Thus, when a trial court has not adopted local rules on a particular representation issue, PERB’s regulations regarding that issue are applicable.¹⁶

Accordingly, where, as here, a local agency or trial court has not adopted local rules governing amendment of certification of a recognized employee organization, PERB’s amendment of certification regulations apply. We therefore conclude that PERB has jurisdiction over SCEA’s petitions to amend certification.

SCEA/AFSCME and the County contend that resort to PERB’s amendment of certification regulations is inappropriate in this case because the local rules provide for changing a recognized employee organization’s identity through decertification. This contention fails to recognize the difference between decertification and amendment of certification. A decertification petition seeks to oust the current recognized employee organization and replace it with either a different employee organization or no representation. (*Jamestown Elementary School District* (1989) PERB Order No. Ad-187; *International Union of Operating Engineers, State of California Locals 3, 12, 39 and 501, AFL-CIO* (California

¹⁶ Following the Legislature’s enactment of Trial Court Act section 71639.1, PERB adopted Regulation 81000, which currently states in full:

Except as otherwise ordered pursuant to Chapter 1, the Board will conduct representation proceedings and/or agency fee rescission elections under the Trial Court Act in accordance with the applicable provisions of this Chapter only where a trial court has not adopted local rules in accordance with Government Code Section 71636, 71636.3 or 71637.1.

State Employees' Association, SEIU, AFL-CIO) (1984) PERB Decision No. 390-S.)

Amendment of certification, on the other hand, “is appropriate where there is no change in the basic identity of the representative chosen by the employees but, rather, where the change is one of form and not of substance.” (*Ventura Community College District* (1982) PERB Order No. Ad-130.) We find nothing in the MMBA or Trial Court Act, or in the legislative history of either statute, to indicate that the Legislature intended for a recognized employee organization to bear the burden of decertification procedures merely to obtain official recognition of a change in the organization’s form, such as affiliation with or disaffiliation from an international union. Thus, the fact that the County’s and the Court’s local rules provide for decertification does not preclude application of PERB’s amendment of certification regulations.

2. Amendment of Certification

Before proceeding to the merits of SCEA’s petitions, it is necessary to identify the issues that are not before the Board in this matter. The ALJ concluded that whether the affiliation agreement allowed disaffiliation after four years and whether AFSCME International properly placed SCEA/AFSCME under an administratorship were internal union matters over which PERB has no jurisdiction.¹⁷ “It is well established that PERB will not interfere in the internal affairs between an employee organization and its members unless it is shown that they significantly impact the member’s relationship with his or her employer.” (*Service Employees International Union Local 1292 (Marriott, et al.)* (2008) PERB Decision No. 1956-M.) SCEA has not shown that the disaffiliation vote or the imposition of the

¹⁷ In light of the ALJ’s conclusions, it is unnecessary to address SCEA’s contention that the ALJ improperly relied on the May 19, 2009 decision of the AFSCME International hearing board upholding the administratorship, which was attached to SCEA/AFSCME’s post-hearing brief.

administratorship had a significant impact on the relationship between SCEA/AFSCME-represented employees and the County or the Court. Accordingly, the Board has no authority to resolve either of these internal union disputes.

It is well-established that PERB has the authority to amend an employee organization's certification to reflect affiliation with, or disaffiliation from, another organization. (*Anaheim City School District, et al.* (1983) PERB Decision No. 349.) Amendment of certification is appropriate in the disaffiliation context "where there is no change in the basic identity of the representative chosen by the employees." (*South County Community College District* (1990) PERB Order No. Ad-215.) Amendment of certification is not appropriate where the disaffiliation creates "a question concerning the identity or authority of the representative." (*Ibid.*) For PERB to amend certification to reflect disaffiliation, the petitioner must show: (1) "'substantial continuity' of representation and identity between the pre- and post-affiliated union;" and (2) the disaffiliation election was conducted with appropriate due process safeguards. (*Ibid.*) If both criteria are not met, a question concerning representation exists that may only be resolved through the applicable election procedure. (*San Jose-Evergreen Community College District* (1990) PERB Order No. Ad-216.)

In determining whether there is substantial continuity between the pre- and post-disaffiliation employee organization, PERB considers "the totality of a situation." (*South County Community College District, supra.*) Significant factors include, but are not limited to: the organization's day-to-day interaction with management; identity of the organization's officers, business agents, and other representatives; changes to the organization's constitution and/or bylaws; ability of members to control the actions of the organization's representatives; changes in dues structure; and retention of the organization's assets and resources. (*Ibid.*;

San Jose-Evergreen Community College District, supra; May Dept. Stores v. NLRB (7th Cir. 1990) 897 F.2d 221, 228.)

SCEA contends the ALJ erred in considering the administratorship when analyzing these factors. Typically in cases where an employee organization seeks to amend its certification to reflect a disaffiliation, PERB compares the organization as it existed prior to the members' disaffiliation vote with the organization that existed after the vote. (*San Jose-Evergreen Community College District, supra; South County Community College District, supra; Ventura Community College District, supra.*) However, when an administratorship is imposed on the local organization as part of the disaffiliation process, it is appropriate to consider changes resulting from the administratorship in determining whether there is substantial continuity between the pre- and post-disaffiliation organization. (*Stardust Hotel & Casino* (1995) 317 NLRB 926, 930; *Quality Inn Waikiki* (1989) 297 NLRB 497, fn. 1.) Thus, the ALJ properly considered the changes to SCEA/AFSCME resulting from the administratorship and we will do so here.

SCEA's day-to-day interaction with County management ceased after Popyack notified the County on February 23, 2009, that Dimitre was no longer an authorized representative of SCEA/AFSCME. SCEA presented no evidence that any SCEA officer or representative dealt with the County on any matter after that date. Dimitre testified without contradiction that he represented a Court employee in a disciplinary matter after the disaffiliation vote. However, the record does not demonstrate that this representation was pursuant to the MOU between SCEA/AFSCME and the Court.

Conversely, SCEA/AFSCME had regular interaction with County and Court management after February 23, 2009. Popyack, Smith and Uriarte had several meetings with County and Court management regarding the continuation of SCEA/AFSCME's obligations

and rights under the MOUs. The County dealt with Smith as SCEA/AFSCME's business agent, responded to an information request Smith made, and forwarded SCEA/AFSCME dues to Smith's office in Eureka. Thus, it was SCEA/AFSCME and not SCEA that continued to interact with County and Court management following disaffiliation.

SCEA argues that this factor should be given no weight because the County unilaterally chose to recognize SCEA/AFSCME and not SCEA following the disaffiliation. The MOU covering the County's miscellaneous, management and professional bargaining units is with SCEA/AFSCME. SCEA, on the other hand, is not a signatory to the MOU and has never been formally recognized by the County as an employee organization. Thus, the County did not choose one employee organization over another but rather continued to recognize the organization named in the MOU as the exclusive representative of employees in the three covered bargaining units.

Following the disaffiliation vote, SCEA had the same executive board¹⁸ and officers as before the vote. It also had the same business agent, Dimitre, who was now directly employed by SCEA instead of AFSCME District Council 57. Smith, who was employed by District Council 57, began service as the business agent for SCEA/AFSCME on February 23, 2009, four days before the disaffiliation vote. Uriarte began handling SCEA/AFSCME business matters in early March 2009 and was appointed deputy administrator of SCEA/AFSCME on April 15, 2009. The identity of SCEA's officers and business agent was the same as before the disaffiliation vote, while those of SCEA/AFSCME changed just before and after the vote. However, the replacement of a local's officers and representatives is "part and parcel of any imposition of a trusteeship or supervisorship" and thus does not indicate a lack of continuity

¹⁸ Two members of the executive board changed between the disaffiliation vote and the PERB hearing. However, based on Shepard's testimony, these changes appear to have been the result of regular turnover in board members.

between the pre- and post-disaffiliation organization. (*Stardust Hotel & Casino, supra*, 317 NLRB at p. 931; see *South County Community College District, supra* [“certain changes due to an association’s affiliation or disaffiliation with another organization . . . are inherent in the reorganization and should not be accorded significant weight in deciding the question of continuity”].)

There was no change in the SCEA/AFSCME bylaws as a result of the administratorship and it appears that SCEA operated under those same bylaws. Hence, this factor has no weight in this case. It is unclear whether SCEA/AFSCME members had the ability to control the actions of SCEA/AFSCME’s officers or representatives. However, it is undisputed that 92 percent of SCEA/AFSCME’s members were still AFSCME members at the time of the PERB hearing. Thus, had a membership vote been called on any matter at that time, they presumably would have been eligible to vote on it. Additionally, there was no change in members’ dues following the disaffiliation vote.

Finally, control over the local’s resources was split after the disaffiliation vote. SCEA/AFSCME continued to occupy the Yreka office leased by District Council 57. However, it appears that SCEA retained possession of the local’s books and records. Popyack testified that when he arrived at the Yreka office on February 25, 2009, the books and records had been removed. He further testified that retrieval of these items was part of the reason he requested the administratorship. Therefore, we find that SCEA/AFSCME was diligently attempting to regain control over the local’s books and records at the time of the hearing. At this same time, neither SCEA nor SCEA/AFSCME had control over the local’s bank accounts and investments because the accounts had been frozen at AFSCME’s request.

Viewed as a whole, these factors indicate there was greater continuity between pre-disaffiliation SCEA/AFSCME and post-disaffiliation SCEA/AFSCME than between the pre-

disaffiliation organization and SCEA. Consequently, SCEA has failed to establish the substantial continuity of representation and identity required for amendment of certification.¹⁹ SCEA's petitions must therefore be dismissed because a question concerning representation exists in this matter that may only be resolved through the procedures set forth in the County's and the Court's local rules. (*San Jose-Evergreen Community College District, supra.*) In so holding, we emphasize that our conclusion is based not upon the existence of those local rules but on SCEA's failure to satisfy the necessary criteria for amendment of certification pursuant to PERB regulations.

ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the petitions for amendment of certification in Case No. SA-AC-63-M, *County of Siskiyou and Siskiyou County Employees' Association and Siskiyou County Employees' Association/AFSCME*, and Case No. SA-AC-64-C, *Siskiyou County Superior Court and Siskiyou County Employees' Association and Siskiyou County Employees Association/AFSCME* are hereby DISMISSED.

Members McKeag and Wesley joined in this Decision.

¹⁹ In light of this conclusion, we need not address whether the due process prong of the *South County Community College District* test remains viable after the National Labor Relations Board's (NLRB) decision in *Raymond F. Kravis Center for the Performing Arts* (2007) 351 NLRB 143, in which the NLRB held that whether the affiliation election was conducted with proper due process safeguards is irrelevant to whether a question concerning representation exists.