P017

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
P.O. Box 420603
San Francisco, CA 94142

PETE WILSON, *Governor*

May 14, 1997

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600 Harrison Street, Suite 535
San Francisco, CA 94107-1370

Robert L. Mueller
Operating Engineers Local Union No. 3
1620 South Loop Road
Alameda, CA 94502

Re: Santa Clara Transit District - Unit Clarification Petitions

Dear Parties,

Enclosed is the Proposed Unit Clarification Order of Hearing Officer Jean Gaskill in the matter referred to above. The decision is hereby adopted as the Director's decision, pursuant to the Department's regulations, 8 California Code of Regulations, section 15855.

The Department's regulations, 8 California Code of Regulations, section 15860, provide that any party may file a statement, setting forth exceptions or newly discovered evidence, together with two copies of a supporting brief, within 20 days from the date of service of the Decision. All other parties may file a response to the exceptions within seven days

after the mailing of the exceptions, or 20 days after the mailing of the initial decision, whichever is later.

Sincerely yours,

Lloyd W. Aubry Jr.
Director of Industrial Relations

cc: Jean Gaskill
Pete Lujan
Vanessa Holton

IN PROCEEDINGS BEFORE THE

DIRECTOR OF THE DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

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|---|---|
| SANTA CLARA COUNTY TRANSIT DISTRICT,<br><br>Petitioner,<br><br>v.<br><br>SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 715 and AMALGAMATED TRANSIT UNION, DIVISION 265, AFL-CIO,<br><br>Respondents. | PROPOSED UNIT CLARIFICATIONS |
| SANTA CLARA COUNTY TRANSIT DISTRICT,<br><br>Petitioner,<br><br>v.<br><br>COUNTY EMPLOYEES MANAGEMENT ASSOCIATION (CEMA), AFFILIATED WITH OPERATING ENGINEERS LOCAL UNION NO. 3 and AMALGAMATED TRANSIT UNION, DIVISION 265, AFL-CIO,<br><br>Respondents. | |

CONSOLIDATED PETITIONS FOR CLARIFICATION OF EXISTING BARGAINING UNITS

On April 17, 1997, the parties met at a conference attended by the Hearing Officer and counsel for all the parties. The purpose of the conference was to consider and hear argument

on the question whether any issues framed by the petitions and amended petitions filed in this case remain undetermined.

Having heard the arguments of counsel and having reviewed the papers heretofore filed in the matter, the Hearing Officer is persuaded that no issues remain to be decided and that the unit clarifications sought by the District can be issued on the basis of the Interim Decision and Supplemental Interim Decision adopted by the Director on February 27, 1997 and March 17, 1997, respectively.

Accordingly, the Hearing Officer proposes that the definitions of the three bargaining units involved in this case be as follows:

I.

**The Unit Represented By Amalgamated Transit Union, Division 265, AFL-CIO**

All employees in production, operation and maintenance activities of the Santa Clara County Transit District, including drivers, dispatchers and maintenance personnel, except employees and the positions held by those employees who transferred to the District effective as of January 1, 1995, as a result of the statutory reorganization mandated by Assembly Bill 2442 and who, prior to the transfer, held positions covered by a labor agreement in effect between Service Employees

International Union Local 715 and the County of Santa Clara, and excluding clerical employees, guards and supervisors not presently covered by a Collective Bargaining Agreement with the Santa Clara County Transit District, and excluding also all classified and unclassified supervisory and administrative employees in coded classifications and the positions held by such employees who transferred to the District effective as of January 1, 1995 as a result of the statutory reorganization mandated by Assembly Bill 2442 and, who prior to the transfer, held positions covered by a labor agreement in effect between County Employees Management Association and the County of Santa Clara.

II.

**The Unit Represented By Service Employees International Union Local 715**

All classified and unclassified workers in the coded classifications, and the positions held by such workers, within the following bargaining units: Clerical; Administrative, Professional and Technical; Blue Collar; Public Health Nursing, who

transferred to the District effective as of January 1, 1995 as a result of the statutory reorganization mandated by Assembly Bill 2442 and, who prior to the transfer, held positions covered by a labor agreement in effect between Service Employees International Union Local 715 and the County of Santa Clara.

III.

**The Unit Represented By County Employees Management Association**

All classified and unclassified employees in the coded classifications, and the positions held by such employees, in the Supervisory-Administrative bargaining unit, who transferred to the District effective as of January 1, 1995, as a result of the statutory reorganization mandated by Assembly Bill 2442 and who, prior to the transfer, held positions covered by a labor agreement in effect between County Employees Management Association and the County of Santa Clara.

Date: 5/12/97

Jean C. Gaskill
Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
P.O. Box 420603
San Francisco, CA 94142

PETE WILSON, *Governor*

March 17, 1997

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Robert L. Mueller
Operating Engineers Local Union No. 3
1620 South Loop Road
Alameda, CA 94502

Dear Parties:

Enclosed is the Proposed Supplemental Interim Decision of Hearing Officer Jean Gaskill in the matter referred to above. The decision is hereby adopted as the Director's decision, pursuant to the Department's regulations, 8 California Code of Regulations, section 15855.

No exceptions to the Intermin Decision will be accepted at this time.

The hearing officer will issue an order convening a conference, preferably during the month of April, to solicit the views of the parties as to: (1) whether any issues framed by the petitions filed in this case remain undetermined and (2) whether the taking of any evidence is necessary to allow the hearing officer to determine any remaining issues. If it appears likely that an additional evidentiary hearing will be needed, the hearing officer at the April conference will also hear the views of the

parties as to whether the filing of exceptions to the Interim Decision shall be permitted prior to the convening of an an additional hearing, or, in the alternative, whether the filing of exceptions shall be permitted only after issuance of the final decision in this matter, deciding all issues raised by the pending petitions.

Notice of the date, time and place of the second part of the hearing will be served on all parties by the hearing officer.

Sincerely yours,

Lloyd W. Aubry Jr.
*Director*

cc: Jean Gaskill
Pete Lujan
Vanessa Holton

IN PROCEEDINGS BEFORE THE

DIRECTOR OF THE DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

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| SANTA CLARA COUNTY TRANSIT DISTRICT,<br><br>Petitioner,<br><br>v.<br><br>SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 715 and AMALGAMATED TRANSIT UNION, DIVISION 265, AFL-CIO,<br><br>Respondents. | SUPPLEMENTAL PROPOSED INTERIM DECISION AND AWARD |
| SANTA CLARA COUNTY TRANSIT DISTRICT,<br><br>Petitioner,<br><br>v.<br><br>COUNTY EMPLOYEES MANAGEMENT ASSOCIATION (CEMA), AFFILIATED WITH OPERATING ENGINEERS LOCAL UNION NO. 3 and AMALGAMATED TRANSIT UNION, DIVISION 265, AFL-CIO,<br><br>Respondents. | |

CONSOLIDATED PETITIONS FOR CLARIFICATION OF EXISTING BARGAINING UNITS

The director has observed that, in the Proposed Interim Decision and Award issued by the Hearing Officer on February 5,

1997, there is no explicit disposition of the following question:

> Whether, upon the expiration of the existing labor agreements between the County and SEIU and CEMA, which agreements were adopted by the District as a result of the statutory reorganization, the obligation of the District to recognize the SEIU and CEMA units ceases.

The question arises because of the suggestion in ATU's briefs that the District was obligated or entitled under Public Utilities Code § 100309 to recognize SEIU and CEMA, if at all, only until the labor contracts existing as of January 1, 1995 unexpired. Upon the expiration of the agreements, according to ATU, the employees in the SEIU unit and the non-supervisory employees, if any, in the CEMA unit would accede to ATU.

The Legislature could not have intended such a result, nor does the statute dictate such a conclusion. It makes no labor relations sense, in the context of a statutory scheme that clearly mandates the transfer intact of the existing bargaining units to the successor entity, that the units should later simply cease to exist and be handed over to another Union without so much as a vote or other expression of the employees in the units to their acquiescence in being so handed over.

The only logical conclusion is that the Legislature intended that the distinct units continue to exist and that, upon the expiration of the labor agreements, the District be obligated to negotiate new contracts instead of continuing to be bound by the terms of the expired agreements. The statute supports such a conclusion.

Section 100309 has two distinct aspects: (1) a command that the District "shall grant recognition to those employee organizations which served as the recognized representatives of the former county employees . . . ," and (2) a directive that the District "shall assume and observe all applicable provisions, including wages, of existing written memoranda of understanding . . . . This obligation extends only for the remainder of the term of the respective existing written memoranda of understanding and to the extent not superseded by a successor agreement . . . ."

The first aspect, i.e., the requirement to "grant recognition," is absolute and is not temporally proscribed by the occurrence of any subsequent event. It contemplates that the obligation will continue until something happens between SEIU and CEMA, on the one hand, and the District, on the other, to terminate the relationship (e.g., decertification).

The second aspect, i.e., the obligation to observe the terms of the existing agreements, is the only one of the two aspects of § 100309 that is temporally proscribed by the duration of the agreements. Upon the expiration of those agreements, the District may cease observing the terms of the expired agreements "to the extent [they are] superseded by . . . successor agreement[s] . . . ."

Thus, this Supplemental Proposed Interim Decision and Award makes explicit what was implicit in the earlier Decision and Award:

- The obligation of the District to recognize the

SEIU and CEMA units survives the expiration of the labor agreements that were in effect on January 1, 1995.

Date: March 10, 1997

Jean C. Gaskill
Hearing Officer

PROOF OF SERVICE BY MAIL
(Code Civ. Proc. §§ 1013a, 2015.5)

Case Name: SANTA CLARA COUNTY TRANSIT DISTRICT v. SERVICE EMPLOYEES INTERNATIONAL, et al.

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 45 Fremont Street, Suite 450, San Francisco, California 94105. On February 28, 1997, I served the following document: **Proposed Interem Decision Of Hearing Officer Jean Gaskil** on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(A) By First Class Mail: I am readily familiar with the practice of the Department of Industrial Relations, Office of the Director Legal Unit, for the collection and processing of correspondence for mailing with the United States Postal Service. I caused each such envelope, with first-class postage thereon fully prepared, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein.

A Richard J. Loftus
Michael W. Droke
Littler, Mendelseon, Fastiff & Tichy
50 West San Fernando St., 14th Floor
San Jose, CA 95113

A Vincent A. Harrington
Van Bourg, Weinberg, Rogers &
Rosenfeld
180 Grand Ave., Suite 1400
Oakland, CA 94612

A William J. Flynn
Neyhart, Anderson, Reilly & Freitas
600 Harrison St., Suite 535
San Francisco, CA 94107-1370

A Robert L. Mueller
Operating Engineers Local Union No. 3
1620 South Loop Road
Alameda, CA 94502

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 28, 1997, at San Francisco, California.

Barbara Richard

Barbara Richard - Declarant

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
P.O. Box 420603
San Francisco, CA 94142

PETE WILSON, *Governor*

February 27, 1997

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Dear Parties,

Enclosed is the Proposed Interim Decision of Hearing Officer Jean Gaskill in the matter referred to above. The decision is hereby adopted as the Director's decision, pursuant to the Department's regulations, 8 California Code of Regulations, section 15855.

The Department's regulations, 8 California Code of Regulations, section 15860, provide that any party may file a statement, setting forth exceptions or newly discovered evidence, together with two copies of a supporting brief, within 20 days from the date of service of the Decision. All other parties may file a response to the exceptions within seven days after the mailing of the exceptions, or 20 days after the mailing of the initial Decision, whichever is later.

Notice of the date, time and place of the second part of the hearing

will be served on all parties by the hearing officer.

Sincerely yours,

Lloyd W. Aubry Jr.
Director of Industrial Relations

cc: Jean Gaskill
Pete Lujan
Vanessa Holton

IN PROCEEDINGS BEFORE THE

DIRECTOR OF THE DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

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| SANTA CLARA COUNTY TRANSIT DISTRICT,<br><br>Petitioner,<br><br>v.<br><br>SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 715 and AMALGAMATED TRANSIT UNION, DIVISION 265, AFL-CIO,<br><br>Respondents. | PROPOSED INTERIM DECISION AND AWARD |
| SANTA CLARA COUNTY TRANSIT DISTRICT,<br><br>Petitioner,<br><br>v.<br><br>COUNTY EMPLOYEES MANAGEMENT ASSOCIATION (CEMA), AFFILIATED WITH OPERATING ENGINEERS LOCAL UNION NO. 3 and AMALGAMATED TRANSIT UNION, DIVISION 265, AFL-CIO,<br><br>Respondents. | |

CONSOLIDATED PETITIONS FOR CLARIFICATION OF EXISTING BARGAINING UNITS

I.

INTRODUCTION

These consolidated petitions for clarification of bargaining units within the workforce of the Santa Clara County Transit District ("District") are brought under California Public Utilities Code Section 100301.[1] Jean C. Gaskill is the Hearing Officer, having been duly appointed by the Director of the Department of Industrial Relations ("Director") pursuant to California Code of Regulations Section 15830. An initial hearing, at which all parties and their attorneys appeared, was held on June 14, 1996.

The petitions constitute the District's request for a declaration of its obligations to recognize and bargain with each of three contending labor organizations and require resolution of a dispute regarding which of the Unions is entitled to be the exclusive bargaining representative of which District employees. The Unions are: Service Employees International Union Local 715 ("SEIU"); Amalgamated Transit Union, Division 265 ("ATU"); and County Employees Management Association ("CEMA").[2]

At the June 14 hearing, it was determined after oral presentations by counsel that the matter would proceed in two

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[1] Unless otherwise indicated, all section references are to the California Public Utilities Code.

[2] Originally, the District filed a petition for clarification relating to the SEIU and ATU bargaining units. It later filed another petition seeking clarification relating to the CEMA and ATU bargaining units and moved to consolidate the two petitions for hearing and determination. At the June 14 hearing, the Hearing Officer heard arguments on, and granted, the motion to consolidate.

phases. Phase one, in the nature of cross-motions for summary judgment, would be decided upon briefs, declarations and supporting documentation.[3] Phase two, requiring further factual hearings, would deal with the specific disputes regarding the scope of the respective bargaining units in light of the decision rendered in the first phase.

This Proposed Interim Decision and Award deals only with the agreed-upon first phase.

## II.

## THE ISSUE

The overarching legal issue in this phase of the proceeding is:

> Under the 1994 legislation that reorganized and established the Santa Clara County Transit District as an independent agency, was the District required to, and did it properly, recognize SEIU and CEMA as the exclusive bargaining agents and assume existing labor agreements for County and Congestion Management Agency employees who transferred to the District?[4]

## III.

## THE BACKGROUND

Legislation that became effective on January 1, 1995, consolidated all public transportation functions in Santa Clara County into a reorganized, independent District and provided for

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[3] The Unions each filed answers to the petitions in an effort to narrow the legal issues, and all parties then filed opening and reply briefs.

[4] This is the only issue raised by the petitions that can be decided at this stage. The Unions, in their briefs, nevertheless, have requested declarations of the scope and composition of their respective bargaining units. These are issues that must be resolved in phase two.

the transfer to the District's workforce of certain support and supervisory employees from the workforces of the County of Santa Clara ("County") and the Santa Clara County Congestion Management Agency ("CMA"). As County and CMA employees, these support and supervisory personnel had been represented by SEIU and CEMA, respectively. The operating employees of the Transit District before the reorganization were represented by ATU.

A. The Pre-Reorganization Lineup:

The District came into existence in 1972 and took over from private entities the public transportation functions in Santa Clara County. At its inception, the District was run by the five-member Santa Clara County Board of Supervisors as its governing body. The District was basically an operating entity of limited jurisdiction employing bus drivers, dispatchers, mechanics and maintenance personnel. Support services relating to the transportation functions, such as management, administrative, clerical and building maintenance services, were provided by persons employed by the County and the CMA.

In August 1973, following an election supervised by the Department of Industrial Relations, ATU was certified as the exclusive bargaining representative for:

> All employees in production, operation and maintenance activities of the Santa Clara County Transit District, including drivers, dispatchers and maintenance personnel, and excluding clerical, guards and supervisors not presently covered by a Collective Bargaining Agreement with the Santa Clara

County Transit District.[5]

The labor contract in existence between the District and ATU at the time these proceedings commenced covers the period from February 15, 1993 to February 11, 1997 and provides that:

> The District recognizes the Union as the exclusive bargaining agent for all employees in the bargaining unit.

The record does not disclose when it was that SEIU became the bargaining agent for the County employees but it appears circumstantially that the relationship predates 1974. The most recent labor contract between the County and SEIU, covering the period from July 18, 1994 through July 14, 1996, provides that:

> The County recognizes Local 715 [SEIU] (Santa Clara County Chapter) as the exclusive bargaining representative for all classified and unclassified workers in the coded classifications within the following bargaining units:
>
> Clerical
> Administrative, Professional and Technical
> Blue Collar
> Public Health Nursing

It was SEIU-represented employees within these units who, before January 1, 1995, had been County and CMA employees furnishing support services to the District's transportation operations and who, after the statutory reorganization of the District, transferred to and became employees of the District.

Neither does the record reflect when it was that CEMA first became the bargaining agent of the supervisory support

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[5] In its brief, ATU points out that it has represented the operating transportation employees in Santa Clara County since the early part of this century.

employees but that relationship also appears to have been in existence since before 1974. The most recent Memorandum of Understanding between the County and CEMA, covering the period from June 20, 1994 through August 25, 1996, provides that:

> The County recognizes County Employees Management Association (CEMA) as the exclusive bargaining representative for all classified and unclassified employees in coded classifications within the Supervisory-Administrative bargaining unit.

It was CEMA-represented supervisory employees within this unit who, before the statutory reorganization, were County and CMA employees furnishing support services to the District and who, afterwards, transferred to and became employees of the District.

Thus, for a long period of time before the reorganization of the District on January 1, 1995, employees from the three recognized bargaining units, albeit working for three different employing entities, were performing the work relating to the provision of public transportation services in Santa Clara County.

B. The Statutory Reorganization:

During its 1993-94 Regular Session, the Legislature enacted AB 2442 amending the Public Utilities Code to provide, in pertinent part, as follows:

> **§ 100060. Creation of Board; Membership**
>
> (a) The government of the district shall be vested in a board of directors which shall consist of 12 members . . . .
>
> **§ 100126. Effect of reorganization on contracts and obligations of the district**
>
> The district, which was established with the approval of the voters in 1972, shall

continue as an entity under the control of its governing board as reorganized pursuant to amendments to this part by statutes that were enacted in 1994. Nothing in this act that added this section in the second year of the 1993-94 Regular Session shall be construed to alter, impair, or terminate existing contracts between the district and other parties, including, but not limited to, funding agreements, grants, labor agreements, agreements entered into pursuant to section 13(c) of the Federal Transit Act and its antecedents, bonds, notes, equipment trust certificates, or other obligations of the district. All rights and powers of the district shall continue in full force and effect and no affirmation, adoption, or assumption by the board of directors is required for that continuation. the district shall become the successor to certain county contracts as provided by agreement between the county and the district. [Emphasis added.]

**§ 100308. Transfer of county employees and employees of the Santa Clara County Congestion Management Agency**

County employees and employees of the Santa Clara County Congestion Management Agency who, on a date or dates determined by the board of directors, terminate their employment and immediately thereafter become employees of the district, shall transfer to the district, and the district shall assume liability for, all of their accrued and unused vacation, sick leave, personal leave, compensating time off and STO balances and days of accrued service in accordance with the records of their former employer in lieu of any payment by the former employer for those balances. Those employees who were covered by a county or congestion management agency pension plan shall be entitled to the same or equivalent rights, options, privileges, benefits, obligations, accrued service, and status under the pension plan of the district.

**§ 100309. Recognition of organizations representing former county employees**

To the extent permitted by law, and until altered or revoked as provided by law, the

> district shall grant recognition to those employee organizations which served as the recognized representatives of the former county employees described in Section 100308 immediately prior to their employment by the district.
>
> The district shall assume and observe all applicable provisions, including wages, of existing written memoranda of understanding in effect between the county and the above recognized labor organizations for those former county employees described in Section 100308 who are employed by the district in positions which would have been covered by those memoranda if the employees had remained employed by the county. This obligation extends only for the remainder of the term of the respective existing written memoranda of understanding and to the extent not superseded by a successor agreement between the district and a recognized labor organization.

C. The Current Alignment:

In August 1994, in anticipation of the passage of AB 2442, representatives of the District as it was then constituted met with representatives of SEIU and CEMA to plan the transition. They entered into "Sideletter Agreements" which, inter alia, provided that:

> Specific provisions were included in the legislation to protect the benefits of County employees who, on specified dates, terminate their employment and immediately thereafter become employees of the [reorganized] District. . . . The District will assume and observe all applicable labor agreement provisions, including wages, for the above County employees until these agreements expire or are superseded by successive labor agreements. In addition, the legislation provides, to the extent permitted by law, that the District shall grant recognition to the County's recognized employee organizations which represented the transferred County employees.



EXHIBIT B

Officially on January 1, 1995, some 238 County employees represented by SEIU and 170 County employees represented by CEMA, in a wide range of support and supervisory positions, transferred and became District employees. The District assumed the collectively bargained obligations under the existing labor contracts and recognized the representative status of SEIU and CEMA for the transferred employees.

Several months later, in May 1995, ATU lodged with the General Manager of the District a grievance challenging the entry of the former County employees into the District's workforce.[6] ATU claimed that those employees should be part of the ATU bargaining unit.[7]

The District filed its petition for clarification in order to resolve the issues raised by ATU's grievance.

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[6] CEMA, SEIU and the District all assert that ATU should be barred by laches or equitable estoppel from challenging the petitions because of ATU's initial five-month delay. To varying degrees, they claim to have changed position in detrimental reliance. At this stage of the proceedings, and in light of the result here reached, it is unnecessary to consider those issues. Any assertions of prejudice suffered as a result of the delay can be considered in phase two as it relates to particular contested job classifications.

[7] It is noted in passing that there is a history of challenges by ATU to the performance by County employees of work that ATU considers as falling within its jurisdiction. The District's SEIU petition asserts, and ATU's answer does not deny, that in 1974 a jurisdictional dispute arose and was settled between SEIU and ATU concerning SEIU-represented employees performing work on the then District's Dial-A-Ride project, and again in 1992 a dispute concerning allocation of work as between the two Unions relating to the Lite Rail workers was settled by a tripartite agreement entered into among SEIU, ATU and the District.



EXHIBIT B

## IV.

## DECISION

Resolution of this phase of the dispute turns upon the meaning and effect of the 1994 amendments that added sections 100126, 100308, and 100309 to the Public Utilities Code. The starting point, therefore, is with the statutory language itself. And, in keeping with the rubric of statutory interpretation, if the meaning of the statute is clear on its face, one need not inquire further.

Section 100126 states in the plainest terms possible that the enactment of the 1994 amendments **"shall not alter, impair, or terminate existing contracts between the district and other parties, including . . . labor agreements . . . ."** On January 1, 1995, when the amendments became effective, there was in existence a labor agreement between SEIU and the County. That agreement had a term commencing on July 18, 1994 and ending on July 14, 1996. Likewise, on January 1, 1995, there was in existence a labor agreement between CEMA and the County, which agreement had a term commencing on June 20, 1994 and ending on August 25, 1996.

It is undisputed that, before January 1, 1995, SEIU was the employee organization recognized by the County as the exclusive bargaining agent for the County employees who were performing the support functions for the transit system. It is also undisputed that, before January 1, 1995, CEMA was recognized by the County as the employee organization representing the supervisory employees employed by the County and performing

certain management and supervisory functions for the transit system.

The core provisions of section 100309 state equally plainly that "**the district shall grant recognition to those employee organizations which served as the recognized representatives of the former county employees . . .**" That is exactly what the District did in this case, i,e, it recognized SEIU and CEMA as the bargaining representatives for the transferred employees.

Section 100309 goes on to state that the "**district shall assume and observe all . . . existing written memoranda of understanding in effect between the county and the above recognized labor organizations . . . for those former county employees . . . employed by the district in positions which would have been covered by those memoranda if the employees had remained employed by the county . . .**" [8] Again, that is what the District did here.

That should end the inquiry, and the result should be that the District acted properly in recognizing SEIU and CEMA and assuming the existing contracts. ATU, however, would parse the words differently and, in a irony that should not go unnoticed,

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[8] In its briefs, ATU argues that it has always had within its bargaining unit certain support and supervisory employees and that, even since the effective date of the amendments, there have been created additional support and non-statutory supervisory positions which belong in the ATU unit. Whether that is so and, if so, which bargaining unit the positions belong in is a subject to be resolved at the second phase of these proceedings. But at this stage, the only question is whether the preexisting ATU unit of production, operation and maintenance employees trumps the District's recognition of the representational rights of SEIU and CEMA or whether those rights survived the transition.

would have the 1994 amendments "alter, impair or terminate" the existing contracts of the other Unions, but not its own.[9]

ATU argues that the introductory phrase of section 100309, "To the extent permitted by law," modifies the otherwise plain meaning of the remainder of the section.[10] First, says ATU, the petition is an effort by the District to "alter" the existing labor agreement between ATU and the District. It views the petition as a challenge to its 1974 certification on the rationale that, if SEIU and CEMA are allowed to represent certain District employees, it would make incursions into ATU's certified unit. Thus, asserts ATU, the petition is faulty because, under section 100301, the existing labor agreement between ATU and the District is a contract bar.[11]

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[9] Much of the argument in ATU's briefs focuses on particular job classifications and the notion that SEIU and CEMA are attempting to capture for themselves the representation of employees who are properly classified as production, operation, and maintenance employees and therefore belong in the ATU unit. Again, this phase of the proceedings is not intended to deal with those issues. Jurisdictional minutiae, if any, can be dealt with in phase two.

[10] ATU's arguments focus on that introductory phrase and rest largely on the requirement in section 100301 that, "In resolving . . . questions of representation including the determination of the appropriate unit or units, . . . the director shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act . . . "

[11] Section 100301 provides in part: "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 bargaining 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 considered to be a bar to representation proceedings for a period of more than two years."

The fallacy in the argument is that the petition does not challenge ATU's unit certification at all. While it may have the effect of dampening ATU's hopes of expanding its existing unit, it will not curtail the unit in any way.

ATU also argues that the object of the petition -- to have multiple Unions representing District employees in multiple bargaining units -- offends the notion that, in a public utility such as a transit district, a systemwide unit is preferable to a multi-unit configuration. In support, ATU cites IBEW 899 v. Aubry, 42 Cal. App.4th 861 (1996). Ordinarily, that would be the rule but, like other rules, this one too has it's exceptions.

To ordain a systemwide unit would be to ignore what has de facto been the case since at least 1974. Employees in three bargaining units, represented by the same three contending unions, have always performed the transit system work of the District. It is true that the District was organizationally fragmented before the reorganization of 1994, but it is nonetheless the case that the transit functions were being carried out by a single workforce spread among the three employing entities and dedicated to those functions. As a consequence of the 1994 amendments, that same workforce was merely gathered up from its existing disparate organizational situs and transposed to a unified one.

Indeed, if it is necessary to place a Labor Management Relations Act gloss upon the events that resulted in a consolidated workforce, the apt analogy is to a merger,

acquisition and successorship situation.[12] Under such a construct, where the acquiring employer hires a majority of the employees who were performing the pre-acquisition work and assumes the labor contracts of the predecessor (which is exactly what happened here), the acquiring employer is the "successor" for collective bargaining purposes, the majority status enjoyed by the predecessor's Unions carries over, and the successor must recognize those Unions. See NLRB V. Burns International Sec. Svcs., 406 U.S. 272 (1972); Fall River Dyeing and Finishing Corp. v. NLRB, 482 U.S. 27 (1987); NLRB v. Fabsteel Co. of Louisiana, 587 F.2d 689 (1979); cert. denied, 442 U.S. 943 (1979)(the presumption of majority status continues even when the successor acquires only part of the predecessor's bargaining unit).

The record shows amply that the drafters of AB 2442 and those who shepherded it through the Legislature undeniably intended the result that the status quo be unaffected by the bill, i.e, that the Unions representing the pre-reorganization County and CMA employees continue to represent them and that their labor contracts carry over to the new regime. There is, in these circumstances, no federal law or administrative practice

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[12] In fact, the legislative history of the amendments repeatedly characterizes the reorganized District as the "successor" to the contracts and employees of the pre-amendment District. See, e.g., AB 2442, Legislative Counsel's Digest, January 4, 1994; Assembly Committee on Transportation Minutes, March 4, 1994, March 22, 1994; Senate Rule Committee Minutes, May 2, 1994, June 21, 1994; Assembly Committee on Transportation Minutes, July 1, 1994.

developed under the LMRA that prevents such a result.[13] SEIU, in particular, was meticulously careful in guiding and following the bill to insure that result. ATU's participation in the process appears to have been to express its opposition on one occasion and very little else. It would be the ultimate irony if, despite the clear intent of the authors, drafters, proponents and legislators, ATU were now free to ignore that intent.

In the final analysis, the result is dictated by the clear, unambiguous language of the statute. The District did what it was required to do and what was permitted by law.

V.

**AWARD**

Accordingly, the Hearing Officer finds that:

- The District was required by the 1994 amendments to the Public Utilities Code to recognize SEIU and CEMA as the exclusive bargaining agents for County and CMA employees who transferred to the District as a result of the statutory reorganization and whom SEIU and CEMA each represented prior to the transfer;

- The District was likewise required to assume and observe the provisions of existing labor agreements between it and SEIU and CEMA for former County and CMA employees employed by the District in positions that would have been covered by those

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[13] ATU makes the argument that, to the extent the CEMA unit is comprised of statutory supervisors exempt under the LMRA, the District is not "permitted by law" to recognize and bargain with CEMA and that, therefore, the District acted improperly in doing so. The argument misses the mark. It is correct that, under the LMRA, the District could not be compelled to recognize and bargain with a unit of supervisors; but it is certainly the law that, if an employer chooses to recognize and bargain with a unit of supervisors, it is permitted to do. The facts that CEMA represented the supervisory employees before the reorganization and that section 100309 mandates post-reorganization recognition on the condition that it be permitted by law, certainly justifies the District's decision to recognize CEMA.

agreements if the employees would have remained employed by the County;

- The District properly recognized SEIU and CEMA as the exclusive bargaining agents for County and CMA employees who transferred to the District and whom SEIU and CEMA each represented prior to the transfer; and

- The District's recognition of SEIU and CEMA and the assumption of the existing contracts were and are permitted by law.

To the extent of the foregoing findings, the petitions are granted.

There are remaining issues that relate to whether, in the reorganized District's workforce, particular employees and disputed classifications claimed by each of the contending Unions are correctly allocated.[14]

Such issues are to be dealt with in phase two of the proceeding unless the parties, guided by the foregoing findings, can resolve them without further hearings.

Date: February 5, 1997

Jean C. Gaskill
Hearing Officer

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[14] By way of example only, and not by way of limitation, there evidently are disputes over whether certain "supervisors" claimed by CEMA are truly statutory supervisors or whether they are production, operation or maintenance personnel claimable by ATU; whether there are "support" personnel claimed by SEIU who are really production, operation and maintenance employees and should be in the ATU unit; whether certain District positions are "positions which would have been covered by [existing SEIU or CEMA] memoranda if the employees had remained employed by the county" within the meaning of section 100309 or whether ATU can lay claim to them; whether post-reorganization positions held by true managers and supervisors, who are exempt under LMRA standards, can be declared to be within a statutorily recognized bargaining unit.