



Human Resources

3300 Capitol Avenue, Building B, P.O. Box 5006, Fremont, CA 94537-5006
510 494-4660 | www.fremont.gov

February 1, 2013

VIA U.S. Mail and E-MAIL
(ksteele@unioncounsel.net)
& (sbyrne@fremont.gov)

Ms. Kerianne R. Steele, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Ms. Sue Byrne, FACE President
4808 Selkirk St
Fremont, CA 94538

Re: Petition to Decertify SEIU, Local 1021

Dear Ms. Steele and Ms. Byrne:

As you know, in late November 2012, the City received a petition to decertify Service Employee International Union (SEIU) Local 1021, and by letter dated January 17, 2013, the City advised the Petitioner that the petition was in order and that it would arrange for a secret ballot election on the question of decertification in accordance with Section 9(j) of its Employer-Employee Relations Rules and Regulations (EER). In response to SEIU concerns about the decertification process, the City reviewed all of its Memorandums of Understanding (MOUs) with the Fremont Association of City Employees (FACE) from 1969 to the present. Based on that review, it now appears that the decertification procedures of the EER are not applicable and that the appropriate procedure is for FACE to disaffiliate from SEIU using its own internal procedures.

The FACE MOUs clearly demonstrate that FACE was the designated exclusive bargaining representative for the employees in that unit starting with the 1969 MOU and that it affiliated with other outside local unions starting with the 1977 MOU. (See the attached pages from each MOU). The MOU's from 1984 to the present each recognize FACE "affiliated" with an outside local union. Although the MOU's from 1977 to 1982 refer to "FACE/United Public Employees, Local 390," correspondence from the FACE President at that time to the City makes it clear that FACE believed it was "affiliated" with Local 390 during that time period. These letters inform the City first of a proposed FACE election to affiliate with United Public Employees Union, Local AFL-CIO, and then of the decision to affiliate. The letters also state that if disaffiliation occurred in the future "formal recognition would remain with FACE." (See attached correspondence dated May 4, 1976, May 24, 1976 and December 20, 1978.) Additionally, the signature blocks of many of the MOU's include a signature line for the SEIU field representative and

various FACE officers. (1978-79 Master MOU, 1980-82 MOU, all MOUs 1997 to present).

We have found nothing in the City records to indicate that the outside local union was ever designated as the exclusive bargaining representative of the employees in FACE or that the outside local union was regarded by the City and by FACE as anything more than an "affiliate" of FACE. If you have any records that suggest a different conclusion please provide them to us for review.

Disaffiliation of a designated exclusive bargaining representative from an outside union is different from decertification and is not controlled by the City's EER. Disaffiliation of FACE from SEIU, Local 1021 is an internal matter for FACE to address. The PERB decision of Siskiyou County Employee's Association/AFSCME (2010), PERB Decision No. 2113-M, a copy of which is attached to this letter, at pages 18-19, addresses the difference between decertification and disaffiliation stating:

"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 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."

The Siskiyou decision characterized disaffiliation as an internal matter as follows:

"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. "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.)"

If you are aware of legal authority to the contrary or that suggests a different analysis, please provide it to us.

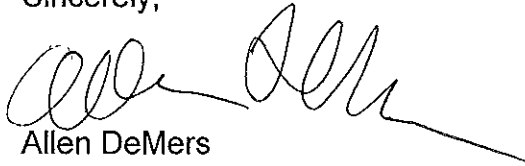
February 1, 2013

Page 3

In the absence of any other information or authority, the City has concluded that decertification under the City EER is not the proper course of action to enable FACE to sever its relationship with SEIU. Rather, it appears that what is proposed by the employees who are members of FACE is that FACE disaffiliates from SEIU. Again, this is an internal matter regulated by FACE's own procedures. Accordingly, the City will take no further steps to arrange for a secret ballot election on the decertification question.

If FACE notifies the City that it has terminated its affiliation with SEIU, the City will meet and confer with FACE as the designated exclusive bargaining representative unless FACE informs the City that it has affiliated with another entity. The current MOU will remain in effect until its expiration on June 30, 2013 regardless of whether FACE chooses to disaffiliate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allen DeMers', written over a horizontal line.

Allen DeMers
Human Resources Manager

cc: Craig Conwright, Decertification Petitioner

Attachments: Initial pages of MOUs 1969-2011
3 letters from FACE to City
Siskiyou PERB Decision

12-0116

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

FACE



**FREMONT ASSOCIATION
OF CITY EMPLOYEES
AND
CITY OF FREMONT**



**TERM OF AGREEMENT
JULY 1, 2011 - JUNE 30, 2013**

**MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT
BETWEEN
CITY OF FREMONT
AND
FREMONT ASSOCIATION OF CITY EMPLOYEES
SEIU, LOCAL 1021**

ARTICLE 1 - ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding (hereinafter "MOU") is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as "City"), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 1021 (hereinafter referred to as "Union"), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with SEIU, Local 1021, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified/part-time* schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted pursuant to the City of Fremont Employer-Employee Relations Resolution or by mutual agreement in writing between said Union and the Municipal Employee Relations Officer. The City also recognizes the Union as the exclusive representative for temporary employees and for provisional employees, which are specifically excluded from the classified service by Section 2-4107 of the Fremont Municipal Code, working in classifications listed in Appendix "A" of this Memorandum of Understanding.

SECTION 3: DEFINITIONS

Full-time Regular Employee:

An individual hired into the classified service in an authorized position and who regularly works a minimum of forty (40) hours per week.

* Modified/part-time schedule employees work at least 20, but less than 40 hours per week.

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

FACE



**FREMONT ASSOCIATION
OF CITY EMPLOYEES
AND
CITY OF FREMONT**



**TERM OF AGREEMENT
JULY 1, 2009 - JUNE 30, 2011**

**MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT
BETWEEN
CITY OF FREMONT
AND
FREMONT ASSOCIATION OF CITY EMPLOYEES
SEIU, LOCAL 1021**

ARTICLE 1 - ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding (hereinafter "MOU") is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as "City"), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 1021 (hereinafter referred to as "Union"), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with SEIU, Local 1021, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified/part-time* schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted pursuant to the City of Fremont Employer-Employee Relations Resolution or by mutual agreement in writing between said Union and the Municipal Employee Relations Officer. The City also recognizes the Union as the exclusive representative for temporary employees and for provisional employees, which are specifically excluded from the classified service by Section 2-4107 of the Fremont Municipal Code, working in classifications listed in Appendix "A" of this Memorandum of Understanding.

SECTION 3: DEFINITIONS

Full-time Regular Employee:

An individual hired into the classified service in an authorized position and who regularly works a minimum of forty (40) hours per week.

* Modified/part-time schedule employees work at least 20, but less than 40 hours per week.

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

FACE



**FREMONT ASSOCIATION
OF CITY EMPLOYEES
AND
CITY OF FREMONT**



**TERM OF AGREEMENT
JULY 1, 2007 - JUNE 30, 2009**

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT
BETWEEN
CITY OF FREMONT
AND
FREMONT ASSOCIATION OF CITY EMPLOYEES
SEIU, LOCAL 1021**

ARTICLE 1 - ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding (hereinafter "MOU") is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as "City"), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 1021 (hereinafter referred to as "Union"), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with SEIU, Local 1021, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified/part-time* schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted pursuant to the City of Fremont Employer-Employee Relations Resolution or by mutual agreement in writing between said Union and the Municipal Employee Relations Officer. The City also recognizes the Union as the exclusive representative for temporary employees and for provisional employees, which are specifically excluded from the classified service by Section 2-4107 of the Fremont Municipal Code, working in classifications listed in Appendix "A" of this Memorandum of Understanding.

SECTION 3: DEFINITIONS

Full-time Regular Employee:

An individual hired into the classified service in an authorized position and who regularly works a minimum of forty (40) hours per week.

* Modified/part-time schedule employees work at least 20, but less than 40 hours per week.

**MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT
BETWEEN
CITY OF FREMONT
AND
FREMONT ASSOCIATION OF CITY EMPLOYEES
SEIU, LOCAL 790, AFL-CIO**

ARTICLE 1 - ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding (hereinafter "MOU") is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as "City"), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 790, AFL-CIO (hereinafter referred to as "Union"), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with SEIU, Local 790, AFL-CIO, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified/part-time* schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted pursuant to the City of Fremont Employer-Employee Relations Resolution or by mutual agreement in writing between said Union and the Municipal Employee Relations Officer. The City also recognizes the Union as the exclusive representative for temporary employees and for provisional employees, which are specifically excluded from the classified service by Section 2-4107 of the Fremont Municipal Code, working in classifications listed in Appendix "A" of this Memorandum of Understanding.

* Modified/part-time schedule employees work at least 20, but less than 40 hours per week.

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

CITY OF FREMONT



AND

**FREMONT ASSOCIATION OF CITY EMPLOYEES
AFFILIATED WITH SEIU, LOCAL 790, AFL-CIO**



**TERM OF AGREEMENT
JULY 1, 2003 – JUNE 30, 2007**

**MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

ARTICLE 1 - ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as "City"), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 790, AFL-CIO (hereinafter referred to as "Union"), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with SEIU, Local 790, AFL-CIO, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal Employee Relations Officer. The City also recognizes the Union as the exclusive representative for temporary employees and for provisional employees, which are specifically excluded from the classified service by Section 2-4107 of the Fremont Municipal Code, working in classifications listed in Appendix "A" of this Memorandum of Understanding.

SECTION 3: STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

SECTION 4: CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding (MOU) is of no force and effect in regard to matters within the authority of the City Council until this MOU is approved by the City Council.

SECTION 5: CONTINUATION OF EXISTING BENEFITS

Except as provided herein, this Memorandum of Understanding does not modify existing benefits established by resolution or ordinance or other compensation benefits. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

SECTION 6: TERM OF UNDERSTANDING

This Memorandum of Understanding incorporates all modifications regarding wages, hours, and other terms and conditions of employment. This Memorandum of Understanding (hereinafter referred to as "MOU") shall be effective as of July 1, 1997 and shall expire June 30, 2000, or shall continue in effect from year to year thereafter unless terminated or modified as provided herein.

SECTION 7: SEPARABILITY OF PROVISIONS

Should any section, clause or provision thereof of this MOU be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provision shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Understanding. Should any such invalidation occur, the parties agree to meet and consider alternate provisions to those declared invalid.

SECTION 8: COMPILATION OF MASTER AGREEMENT

The parties agree that all agreements made in previous Memoranda of Understanding, and not subsequently modified, have been included in the Master Memorandum of Understanding.

SECTION 9: DISTRIBUTION OF MEMORANDUM OF UNDERSTANDING

The City agrees to provide the Union with one (1) executed copy of the Master Memorandum of Understanding. The Union agrees to provide one (1) copy of the MOU to each person represented by the Union whether a member of the Union or not. The City agrees to provide the Union with a monthly accounting of personnel in positions represented by the Union.

SECTION 10: CITY RIGHTS

The City reserves, retains and is vested with any management rights not expressly granted to the Union by this Agreement, the Personnel Rules or the Employer-Employee Relations Policy. These City rights include but are not limited to the right to:

1. Determine and modify the organization of City government and its constituent work units.
2. Determine the nature, standard, levels and mode of delivery of City services.

**CITY OF FREMONT
FACE MOU
1997 - 2000
INDEX**

ABC CASH	18
ACTING PAY	7
AGENCY SHOP	3
ALTERNATE BENEFITS AND COMPENSATION PLAN	18
ALTERNATE SCHEDULED/LINGASSIGNMENT OF FLEX TIME HOURS	22
AMERICANS WITH DISABILITIES ACT	5
❖ ANNIVERSARY PAY	12
❖ APPEAL PROCEDURE	27
APPLICABILITY OF PROVISIONS OF THE MEMORANDUM OF UNDERSTANDING	35
ARBITRATION	23/27
❖ BLOOD BANK	31
BREAK BETWEEN SHIFTS	23
CALL BACK	8
CATASTROPHIC SICK LEAVE BANK	20
CITY COUNCIL AGENDA	31
CITY COUNCIL APPROVAL	1
CITY RIGHTS	2
CLASSIFICATION AND POSITION CHANGES	31
COMP TIME	10
COMPILATION OF MASTER AGREEMENT	2
CONFIDENTIAL EMPLOYEES	36
CONTINUATION OF EXISTING BENEFITS	2
CONVERSION OF EMPLOYER PAID MEMBER CONTRIBUTION TO BASE SALARY	21
COURT APPEARANCE PAY	12
DAYLIGHT SAVINGS TIME	23
❖ DEFERRED COMPENSATION	12
DEFINITION OF A WORKDAY	13
DENTAL BENEFITS	19
DISTRIBUTION OF MEMORANDUM OF UNDERSTANDING	2
❖ EMPLOYEE RIGHT TO REPRESENTATION	30
EMPLOYEE TRANSFER/PROMOTION PROCESS	32
EMPLOYMENT OF PERSONS IN A PROVISIONAL STATUS	32
EMPLOYMENT OF TEMPORARY WORKERS	33

❖ = Section does not apply to provisional or temporary employees

EXHIBIT A	39
❖ FAMILY LEAVE ACTS	17
FLEX TIME HOURS	22
GENERAL LEAVE	13
❖ GRIEVANCE PROCEDURE	24
HEALTH BENEFITS ALLOWANCE	18
HOLIDAYS	16
IMPLEMENTATION OF INTERNAL REVENUE CODE SECTION 414(H)(2) EMPLOYER PICKUP	22
INSURANCE AND BENEFITS	18
INSURANCE BENEFIT ADMINISTRATION	21
JOINT LABOR-MANAGEMENT COMMITTEE	32
❖ JURY DUTY LEAVE	17
LEAVES	13
❖ LEAVE WITHOUT PAY	17
LIFE INSURANCE COVERAGE	19
LONG TERM DISABILITY	19
MANDATORY MEETINGS/OT	10
MEAL PERIODS	22
❖ MILITARY LEAVE	23
MILITARY SERVICE CREDIT	21
MISCELLANEOUS PROVISIONS	36
MODIFIED SCHEDULE/OT	9
NON DISCRIMINATION	5
ORGANIZATION BUSINESS	4
OVERTIME	8
❖ PARENTAL LEAVE	17
PARTIES TO UNDERSTANDING	1
PROMOTION & TRANSFER	32
PROVISIONAL STATUS	32
PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)	21
RECOGNITION	1
RECOGNITION PAY	8
❖ REINSTATEMENT OF SENIORITY	5
RESOLUTION OF DISPUTES	36
RETIREMENT	21
❖ RETIREE MEDICAL BENEFITS	19
SALARIES	5
SALARY CONTINUATION PLAN/LTD	19
SEPARABILITY OF PROVISIONS	2
SICK LEAVE BANK	15
SHIFT DIFFERENTIAL	12
STANDBY TIME	23
STATE LAW COMPLIANCE	1
TEMPORARY AND PROVISIONAL EMPLOYEES	32

❖ = Section does not apply to provisional or temporary employees

**MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

ARTICLE 1 - ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as "City"), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH UNITED PUBLIC EMPLOYEES, LOCAL 790, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO (hereinafter referred to as "Union"), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with United Public Employees, Local 790, Service Employees International Union, AFL-CIO, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal Employee Relations Officer. The City also recognizes the Union as the exclusive representative for temporary employees and for provisional employees, which are specifically excluded from the classified service by Section 2-4107 of the Fremont Municipal Code, working in classifications listed in Appendix "A" of this Memorandum of Understanding.

SECTION 3: STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

SECTION 4: CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force and effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

MASTER
MEMORANDUM OF UNDERSTANDING
on
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

THE CITY OF FREMONT
and
THE FREMONT ASSOCIATION OF CITY EMPLOYEES
affiliated with
UNITED PUBLIC EMPLOYEES LOCAL 790
Service Employees International Union, AFL-CIO

July 1, 1993 - June 30, 1997*

- * See Article 1, Section 6 (Term of Understanding), which affords either party the right to terminate the final year of the Memorandum of Understanding.

**MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

ARTICLE 1 - ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as "City"), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH UNITED PUBLIC EMPLOYEES, LOCAL 790, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO (hereinafter referred to as "Union"), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with United Public Employees, Local 790, Service Employees International Union, AFL-CIO, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer. The City also recognizes the Union as the exclusive representative for temporary employees and for provisional employees, which are specifically excluded from the classified service by Section 2-4107 of the Fremont Municipal Code, working in classifications listed in Appendix "A" of this Memorandum of Understanding.

SECTION 3: STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

SECTION 4: CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force and effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

MASTER
MEMORANDUM OF UNDERSTANDING
on
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

THE CITY OF FREMONT
and
THE FREMONT ASSOCIATION OF CITY EMPLOYEES
affiliated with
UNITED PUBLIC EMPLOYEES LOCAL 790
Service Employees International Union, AFL-CIO

July 1, 1990 - June 30, 1993

**MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

CHAPTER 1. ADMINISTRATIVE

ARTICLE I: PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as CITY), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH UNITED PUBLIC EMPLOYEES, LOCAL 790, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO (hereinafter referred to as Union), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

ARTICLE II: RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with United Public Employees, Local 790, Service Employees International Union, AFL-CIO, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer.

ARTICLE III: STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

ARTICLE IV: CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force and effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

ARTICLE V: CONTINUATION OF EXISTING BENEFITS

Except as provided herein, this Memorandum of Understanding does not modify existing benefits established by resolution or ordinance or other compensation benefits. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

MASTER

MEMORANDUM OF UNDERSTANDING

between

THE CITY OF FREMONT

and

THE FREMONT ASSOCIATION OF CITY EMPLOYEES

affiliated with

UNITED PUBLIC EMPLOYEES LOCAL 390/400
Service Employees International Union, AFL-CIO

July 1, 1987 - June 30, 1990

MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

CHAPTER 1. ADMINISTRATIVE

ARTICLE I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as CITY), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH UNITED PUBLIC EMPLOYEES, LOCAL 790, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO (hereinafter referred to as Union), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

ARTICLE II. RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with United Public Employees, Local 790, Service Employees International Union, AFL-CIO, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto

and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer.

ARTICLE III. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

ARTICLE IV. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force and effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

ARTICLE V. CONTINUATION OF EXISTING BENEFITS

Except as provided herein, this Memorandum of Understanding does not modify existing benefits established by resolution or ordinance or other compensation benefits. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

MEMORANDUM OF UNDERSTANDING

between

THE CITY OF FREMONT

and

THE FREMONT ASSOCIATION OF CITY EMPLOYEES

affiliated with

**UNITED PUBLIC EMPLOYEES LOCAL 390/400
Service Employees International Union, AFL-CIO**

July 1, 1984 - June 30, 1987



Military Leave	14
Military Service Credit	13
Organization Business	18
Overtime	4
Parties to Understanding	1
Pregnancy/Maternity Leave	9
Public Employees Retirement System (PERS)	13
Recognition	1
Salaries	2
Salary Continuation Plan	12
Salary Schedule	A1
Separability of Provisions	2
Sick Leave Bank, Use of	8
Standby Time	14
State Law Compliance	1
Terms of Understanding	2
Uniform Allowance	6
Union Security	19
Video Display Terminals-Pregnant Employees	19
Workday, Definition of	8

MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

CHAPTER 1. ADMINISTRATIVE

ARTICLE I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as CITY), and the FREMONT ASSOCIATION OF CITY EMPLOYEES AFFILIATED WITH UNITED PUBLIC EMPLOYEES, LOCAL 390/400, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO (hereinafter referred to as UNION), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

ARTICLE II. RECOGNITION

The City recognizes the Fremont Association of City Employees affiliated with United Public Employees, Local 390/400, Service Employees International Union, AFL-CIO, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer.

ARTICLE III. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq, of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

ARTICLE IV. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force and effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

MASTER

M E M O R A N D U M O F U N D E R S T A N D I N G

on

WAGES, HOURS AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

FREMONT ASSOCIATION OF CITY EMPLOYEES/UNITED
PUBLIC EMPLOYEES, LOCAL 390

AND

CITY OF FREMONT

TERM OF AGREEMENT

July 1, 1982 through June 30, 1984

MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

CHAPTER 1. ADMINISTRATIVE

ARTICLE I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as CITY), and the FREMONT ASSOCIATION OF CITY EMPLOYEES/UNITED PUBLIC EMPLOYEES, LOCAL 390 (hereinafter referred to as Union), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

ARTICLE II. RECOGNITION

- A. The City recognizes the Fremont Association of City Employees/United Public Employees, Local 390, as the exclusive representative for the purposes of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer.
- B. It is agreed and understood that employees in confidential positions shall be excluded from this Recognition article.

C. Modified schedule employees, unless otherwise provided for herein, shall receive equivalent benefits on a proportionate basis as follows:

<u>Annual Budgeted Number of Hours</u>	<u>Proportionate Amount of Benefit</u>
At least 1040 hours but not more than 1456 hours	Fifty Percent (50%)
Greater than 1456 hours but not 1872 or more hours	Seventy-five Percent (75%)

ARTICLE III. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

ARTICLE IV. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force and effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

ARTICLE V. CONTINUATION OF EXISTING BENEFITS

Except as provided herein, this Memorandum of Understanding does not modify existing benefits established by resolution or ordinance or other compensation benefits. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

MASTER

M E M O R A N D U M O F U N D E R S T A N D I N G

on

WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

FREMONT ASSOCIATION OF CITY EMPLOYEES/UNITED
PUBLIC EMPLOYEES, LOCAL 390

AND

CITY OF FREMONT

TERM OF AGREEMENT

July 1, 1980 through June 30, 1982

MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

CHAPTER 1. ADMINISTRATIVE

ARTICLE I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as CITY), and the FREMONT ASSOCIATION OF CITY EMPLOYEES/UNITED PUBLIC EMPLOYEES, LOCAL 390 (hereinafter referred to as Union), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

ARTICLE II. RECOGNITION

- A. The City recognizes the Fremont Association of City Employees/United Public Employees, Local 390, as the exclusive representative for the purposes of establishing wages, hours, and other terms and conditions of employment for full-time and modified schedule employees in the classified service in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer.
- B. It is agreed and understood that employees in confidential positions shall be excluded from this Recognition article.

C. Modified schedule employees, unless otherwise provided for herein, shall receive equivalent benefits on a proportionate basis as follows:

<u>Annual Budgeted Number of Hours</u>	<u>Proportionate Amount of Benefit</u>
At least 1040 hours but not more than 1456 hours	Fifty Percent (50%)
Greater than 1456 hours but not 1872 or more hours	Seventy-five Percent (75%)

ARTICLE III. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

ARTICLE IV. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force and effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

ARTICLE V. CONTINUATION OF EXISTING BENEFITS

Except as provided herein, this Memorandum of Understanding does not modify existing benefits established by resolution or ordinance or other compensation benefits. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

RESOLUTION NO. 4628

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREMONT APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE MUNICIPAL EMPLOYEE RELATIONS OFFICER AND A FORMALLY RECOGNIZED EMPLOYEE ORGANIZATION, INCLUDING AN EMPLOYEE COMPENSATION PLAN IN REGARD TO CERTAIN CLASSES OF EMPLOYMENT, AND SUPPLEMENTAL COMPENSATION BENEFITS.

MOU — 1979 — 1980

BE IT RESOLVED by the City Council of the City of Fremont as follows:

Section 1: Approval of Memorandum of Understanding.

That certain Master Memorandum of Understanding, agreed to by the Municipal Employee Relations Officer (City Manager) and the formally recognized employee organization representing employees who are members of Fremont Association of City Employees/United Public Employees, Local 390, submitted to and considered by this Council on this date, is hereby approved in regard to all matters therein requiring approval by the City Council; and declaring its intention to implement such Memorandum by whatever action is necessary by this City Council; and directing the City Manager to implement said Memorandum by whatever further action is necessary by him.

Section 2: Definitions.

That for purposes of this resolution, the following terms shall have the following meanings:

(a) City. "City" shall mean City of Fremont, a municipal corporation;

(b) FACE Employees. "FACE employees" means those persons in classes of employment whose titles are set forth in Exhibit "A" of this resolution.

Section 3: Recognition.

The City recognizes the Fremont Association of City Employees/United Public Employees, Local 390 as the exclusive representative for the purposes of establishing wages, hours and other terms and conditions of employment for full-time employees in the position classifications set forth in Exhibit "A", attached

hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the Municipal Employee Relations Officer.

It is agreed and understood that employees in the following position classifications are designated as CONFIDENTIAL, and shall be excluded from this section:

Secretary to the City Manager

Secretary to the City Attorney

Typist Clerk II, Management Services Administration

Personnel Clerk

Secretary/Senior Secretary to:

Assistant City Manager/Community & Economic
Development Manager

Police Chief

Fire Chief

~~Management Services Director~~

Finance Director

Leisure Services Superintendent

Other provisions of that certain Memorandum of Understanding between City and Fremont Association of City Employees/United Public Employees, Local 390, approved pursuant to Section 1 of this resolution, shall extend to said employees.

Section 4: Approval of Modification to Compensation Plan;
 Establishment of New Classes of Employment.

(a) General:

The approved Compensation (salary) Plan for FACE employees shall be as set forth in Exhibit "A" of Resolution No. 4046, as amended by Resolutions Nos. 4214, 4231 and 4401; provided, however, that said plan shall not be applicable to those classes of employment set forth in Appendix "A" to Resolution No. 4499, pertaining to Operating Engineers employees; provided, further, that said plan is hereby modified with respect to certain classes of employment set forth in Exhibit "A-1" of this resolution, in the manner prescribed therein. The salary ranges for said employees, and the effective dates thereof, shall be as set forth in Exhibit

1st Master MOU
Includes all prior MOUs
1969-70 thru 7/78 - 6/79

MASTER

M E M O R A N D U M O F U N D E R S T A N D I N G

on

WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

FREMONT ASSOCIATION OF CITY EMPLOYEES/UNITED
PUBLIC EMPLOYEES, LOCAL 390

AND

CITY OF FREMONT

TERM OF AGREEMENT

July 1, 1978 through June 30, 1979

MASTER
MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT

CHAPTER 1. ADMINISTRATIVE

ARTICLE I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as CITY), and the FREMONT ASSOCIATION OF CITY EMPLOYEES/UNITED PUBLIC EMPLOYEES, LOCAL 390 (hereinafter referred to as Union), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

ARTICLE II. RECOGNITION

- A. The City recognizes the Fremont Association of City Employees/United Public Employees, Local 390, as the exclusive representative for the purposes of establishing wages, hours, and other terms and conditions of employment for full-time employees in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer.
- B. It is agreed and understood that employees in the following positions are designated as CONFIDENTIAL and shall be excluded from this Recognition Article:

Secretary to the City Manager
Secretary to the City Attorney
Typist Clerk II, Management
Services Administration
Personnel Clerk

Secretary/Senior Secretary to:
Assistant City Manager/Community
& Economic Development Manager
Police Chief
Fire Chief
Management Services Director
Finance Director
Leisure Services Superintendent

MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT
FOR THE PERIOD JANUARY 1, 1977 - JUNE 30, 1978

ARTICLE I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by, and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as CITY), and the FREMONT ASSOCIATION OF CITY EMPLOYEES/UNITED PUBLIC EMPLOYEES, LOCAL 390 (hereinafter referred to as the Union), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A" attached hereto and made a part hereof.

ARTICLE II. RECOGNITION

The City recognizes the Fremont Association of City Employees/United Public Employees, Local 390 as the exclusive representative for the purposes of establishing wages, hours and other terms and conditions of employment for full-time employees in the position classifications set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the municipal employee relations officer.

It is agreed and understood that employees in the following position classifications are designated as CONFIDENTIAL and shall be excluded from this Recognition Article:

Secretary to the City Manager
Secretary to the City Attorney
Personnel Clerk
Secretary/Senior Secretary to:
Assistant City Manager/Community & Economic
Development Manager
Police Chief
Fire Chief
Management Services Director
Finance Director
Leisure Services Superintendent

It is understood and agreed by the parties, however, that other provisions of this Memorandum of Understanding, shall extend to such employee.

ARTICLE III. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

ARTICLE IV. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

ARTICLE V. TERMS OF UNDERSTANDING

This Memorandum of Understanding incorporates all modifications regarding wages, hours, and other terms and conditions of employment. This Memorandum of Understanding shall be effective as of January 1, 1977, and shall expire June 30, 1978, or shall continue in effect from year to year thereafter unless terminated as provided herein. Either party desiring to terminate this Understanding must notify the other in writing at least sixty (60) days but not more than ninety (90) days prior to the expiration date of this Memorandum of Understanding.

ARTICLE VI. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits established by resolution or ordinance or other compensation

MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT
FOR THE PERIOD JULY 1, 1975 - DECEMBER 31, 1976

I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is between the representatives of the CITY OF FREMONT, CALIFORNIA, and the representatives of the FREMONT ASSOCIATION OF CITY EMPLOYEES on behalf of employees occupying position classifications set forth in Exhibit "A", attached hereto.

II. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2, of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

III. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

IV. TERMS OF UNDERSTANDING

This Memorandum of Understanding incorporates all modifications regarding wages, hours and other terms and conditions of employment. This Memorandum of Understanding shall be effective as of July 1, 1975, and shall expire December 31, 1976, or shall continue in effect from year to year thereafter unless terminated as provided herein. Either party desiring to terminate this Understanding must notify the other in writing at least sixty (60) days but not more than ninety (90) days prior to the expiration date of this Memorandum of Understanding.

V. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits contained in the current salary resolution and other compensation benefits, or in the Personnel Resolution or Personnel Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT
FOR THE FISCAL YEARS 1973-74 AND 1974-75

I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is between the representatives of the CITY OF FREMONT, CALIFORNIA, and the representatives of the FREMONT ASSOCIATION OF CITY EMPLOYEES on behalf of employees occupying position classifications set forth in Exhibit "A", attached hereto.

II. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2, of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

III. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

IV. TERMS OF UNDERSTANDING

Unless otherwise indicated, this Memorandum of Understanding embodies all modifications on wages, hours and other terms and conditions of employment, for the period beginning July 1, 1973 and continuing through June 30, 1975 at which time all conditions, agreements and understandings terminate.

V. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits contained in the current salary resolution and other compensation benefits, or in the Personnel Resolution or Personnel Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

VI. SALARIES

Salaries for the term of this Understanding shall be set for the position classifications listed in Exhibit "A", attached hereto according to the salary range assigned to each classification on the date specified.

RESOLUTION NO. 3330

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREMONT APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE MUNICIPAL EMPLOYEES RELATIONS OFFICER AND A FORMALLY RECOGNIZED EMPLOYEE ORGANIZATION, INCLUDING AN EMPLOYEE COMPENSATION PLAN FOR 1973-74 AND 1974-75 IN REGARD TO CERTAIN CLASSES OF EMPLOYMENT, AND SUPPLEMENTAL COMPENSATION BENEFITS.

BE IT RESOLVED by the City Council of the City of Fremont as follows:

Section 1:

That that certain Memorandum of Understanding, agreed to by the Municipal Employees Relations Officer (City Manager) and the formally recognized employee organization representing employees who are members of Fremont Association of City Employees, submitted to and considered by this Council on this date, is hereby approved in regard to all matters therein requiring approval by the City Council, and declaring its intentions to implement said memorandum by whatever further action is necessary by the City Manager.

Section 2:

That pursuant to the foregoing, the document entitled "Approved Compensation (Salary) Plan, 1973-74, 1974-75, Fremont Association of City Employees" making allocation of certain classes of employment within the classified service of the city to salary ranges, as set forth in Exhibit "A" attached hereto and made a part hereof, hereby is approved. It is hereby declared that the salary ranges set forth in said Exhibit "A" are substantially, but not exactly, in accordance with those basic salary ranges set forth in Section 2-4125(a) of the Fremont Municipal Code; however it is the intention of this City Council that the system of allocation of classes of employment to salary range numbers set out in a basic salary range table, which table is established by ordinance, be abolished, inasmuch as such system seriously impairs flexibility in setting salary ranges. It is the further intent of this City Council that in lieu of said system, salary ranges shall be adopted for the various classes of employment by resolution with five steps for each class and a 5% increment between each

MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT
FOR THE FISCAL YEAR 1972-73

I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is between the representatives of the City of Fremont, California, and the representatives of the Premont Association of City Employees on behalf of employees occupying the employment position classifications set forth in Exhibit A, attached hereto.

II. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

III. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

IV. TERMS OF UNDERSTANDING

This Memorandum of Understanding embodies all modifications on wages, hours and other terms and conditions of employment, for the period beginning July 1, 1972 and continuing through June 30, 1973, at which time all conditions, agreements and understandings terminate.

V. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits contained in the current salary resolution and other compensation benefits, or in the Personnel Resolution or Personnel Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this understanding.

VI. SALARIES

Salaries for the term of this understanding shall be set for the position classifications set forth in Exhibit A according to the salary range assigned to each classification. The table of salary ranges used is that contained in the Fremont Municipal Code.

VII. EMERGENCY LEAVE

In case of a death in the immediate family, employees in the position classifications specified in Exhibit A of this Memorandum of Understanding may be granted emergency leave of absence with pay for the work days falling during the period from the time of death and the day of the funeral, not to exceed five (5) work days. Emergency leave will not be charged against accrued sick leave or vacation time. "Immediate family" is defined as wife, husband, child, brother, sister, parent, or current parent-in-law, grandparent, or grandparent-in-law, except that a relative residing in and a member of the same household may be considered as of the immediate family.

VIII. RESIDENCE

ARTICLE XVII, Section 9 of the Personnel Rules and Regulations shall be amended to provide that employees in the position classifications specified in Exhibit A of this Memorandum of Understanding shall not be required to reside within any particular area or fixed distance ^{YIMILU} from their places of work.

IX. SAVED BY SHOW

OR TIME
CHP DAY
TOP

The City shall provide at its expense safety food stores to workers of the Public Works and/or repair crew. All replacements for such stores shall be at City expense but only with the prior approval of the Department Head.

MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT
FOR THE FISCAL YEAR 1971-72

I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is between the representatives of the City of Fremont, California, and the representatives of the Fremont Association of City Employees on behalf of employees occupying the employment position classifications set forth in Exhibit A, attached hereto.

II. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

III. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

XI
IV. TERMS OF UNDERSTANDING

This Memorandum of Understanding embodies all modifications on wages, hours and other terms and conditions of employment, for the period beginning July 1, 1971 and continuing through June 30, 1972, at which time all conditions, agreements and understandings terminate.

V. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits contained in the current salary resolution and other compensation benefits, or in the Personnel Resolution or Personnel Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this understanding.

VI. SALARIES

Salaries for the term of this understanding shall be set for the position classifications set forth in Exhibit A. according to the salary range assigned to each classification. The table of salary ranges used is that contained in the Fremont Municipal Code.

VII. ANNUAL VACATION LEAVE

All eligible employees shall receive an annual vacation leave of 12 workdays for each year of service through the fifth year; 15 workdays for each year of service through the tenth year; 18 workdays for each year of service through the twentieth year; and 21 workdays for each year of service after the twentieth year.

VIII. SICK LEAVE

A. For employees employed in the position classifications specified in Exhibit A of this Memorandum of Understanding up to 3 days of earned sick leave per year may be used for illness involving a member of the employee's immediate family requiring the care and/or involvement of the employee. The employee's immediate family is defined as wife, husband, child, brother, sister, parent, parent-in-law, grandparents, and grandparents-in-law, except that a relative residing in the same household may, for the purpose of this section, be considered as of the immediate family.

B. The 6 month waiting period for utilizing earned sick leave is hereby eliminated and all employees hired ~~on or after July 1, 1971~~ in the position classifications specified in Exhibit A of this Memorandum of Understanding may take sick leave as earned during the first 6 months

CLB

MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT
FOR THE FISCAL YEAR 1970-71

I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is between the representatives of the City of Fremont, California, and the representatives of the Fremont Association of City Employees on behalf of employees occupying the employment position classifications set forth in Exhibit A, attached hereto.

II. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

c

III. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

IV. TERMS OF UNDERSTANDING

This Memorandum of Understanding embodies all modifications on wages, hours and other terms and conditions of employment, for the period beginning July 1, 1970 and continuing through June 30, 1971, at which time all conditions, agreements and understandings terminate.

V. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits contained in the current salary resolution and other compensation benefits, or in the Personnel Resolution or Personnel Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

VI. Salaries for the term of this understanding shall be set for the position classification set forth in Exhibit A, according to the salary range assigned to each classification. The table of salary ranges used is that contained in the Fremont Municipal Code (Sec. 2.4125).

VII. ANNUAL VACATION LEAVE

All eligible employees shall receive an annual vacation leave of 12 workdays for each year of service through the fifth year; 15 workdays for each year of service through the tenth year; and 18 workdays for each year of service after the tenth year.

The following vacation carry-over provision in Council Resolution 688, Article XII, Section 1, shall be removed:

"No employee shall, without approval of the City Manager, have accumulated unused vacation leave of more than ten days, as of the end of any calendar year."

The following provision of the same section of Council Resolution 688 shall be retained:

"No employee shall in any case at any time accumulate more than twenty-four work days of vacation leave."

MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT
FOR THE FISCAL YEAR 1969-70

I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is between the Representatives of the management staff of the City of Fremont, California, and the Representatives of the Fremont Association of City Employees on behalf of employees occupying the employment position classifications set forth in Exhibit A, attached hereto.

II. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2, of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

III. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to the City Council for determination.

IV. TERMS OF UNDERSTANDING

This Memorandum of Understanding embodies all modifications on wages, hours and other terms and conditions of employment, for the period beginning July 1, 1969 and continuing through June 30, 1970, at which time all conditions, agreements and understandings terminate.

V. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits contained in the current salary resolution and other compensation benefits, or in the Personnel Resolution or Personnel Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

VI. SALARIES

Salaries for the term of this understanding shall be set for the position classifications set forth in Exhibit A, according to the salary range assigned to each classification. The table of salary ranges used is that contained in the Fremont Municipal Code.

VII. ACHIEVEMENT-PERFORMANCE RECOGNITION

Within 90 days following the appropriation of funds by the City Council to permit its implementation, a program will be developed and submitted to the Council which will recognize employees occupying the position classifications set forth in Exhibit A (with the possible exception of those indicated management classifications), on the basis of such factors as length of employment with the City, their record of work performance, and completion of educational courses and/or training programs that will increase their value to the City. Such recognition shall include some compensation in addition to that which would normally be received by those employees qualifying under the provisions of the program. If, because of uncontrollable factors, it proves to be impossible to submit such a recognition program to the Council for consideration within 90 days, then the Fremont Association of City Employees shall be so notified in writing prior to the expiration of this time period. Such notification shall also indicate the earliest date it will be possible to submit such a recognition program to the City Council. Upon adoption by the Council, the program will become retroactively effective as of July 1, 1969.



fremont association of
city employees /

LOCAL 390
UNITED PUBLIC EMPLOYEE

December 20, 1978

Mr. Don Driggs
City Manager
City of Fremont
Fremont, California

Dear Mr. Driggs

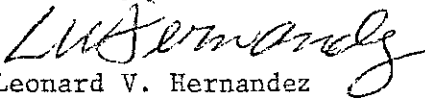
As per our conversation of December 6, 1978, we confirm that should F.A.C.E. in the future disaffiliate from Local 390 the F.A.C.E. President would so advise the City in writing. Said notification would cause the rescission of the May 24, 1976 letter from then President Ward advising of the affiliation.

Should such a disaffiliation occur under appropriate, and proper procedures, formal recognition as initially granted by the City would remain with F.A.C.E. Should UPE Local 390 terminate affiliation under appropriate, and proper procedures formal recognition would there after revert to F.A.C.E.

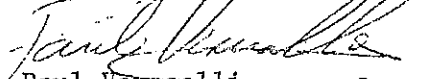
Further official correspondence from the City to FACE/390 should be addressed to the President of FACE/390, with a copy to the assigned Business Representative.

Until further notice, those principals are, Leonard V. Hernandez and Shirley Campbell respectively.

Sincerely Yours


Leonard V. Hernandez
President FACE/390

Sincerely Yours


Paul Varacalli
Executive Secretary
UPE Local 390

cc Ron Gallaher
Dennis Jones
Shirley Campbell

F. A. C. E.
Fremont Association of City Employees

May 24, 1976

John Jaeger
Employee Relations Officer
City of Fremont

Dear John:

This letter is to officially advise you and the City of Fremont of the outcome of the recent employee election held on May 18, 1976. The election resulted in a 37 to 22 vote in favor of affiliation with the United Public Employees Local 390, AFL-CIO. Therefore, effective immediately, Local 390 will represent F.A.C.E. employees for the purposes of negotiation in the meet and confer process and in all other employee matters on a day-to-day basis.

Paul Varacalli, Executive Secretary of Local 390, will serve as the official union representative for F.A.C.E. employees in dealing with the City of Fremont. In the very near future I would like to schedule a meeting with you, the F.A.C.E. Board of Directors and Mr. Varacalli to outline the procedures and conditions of this new employee/City relationship.

One matter, in particular, that should be taken up immediately is the status of the proposed confidential employee unit which we have met on once already. Mr. Varacalli and I would like to meet with you further on that subject to reach a final solution.

Finally, I would like to thank you for your assistance in supervising the past election and for your cooperation on all other employee matters.

Sincerely,



Douglas F. Ward
F.A.C.E. President

cc: Tom Pratt, Personnel Director
Don Driggs, City Manager
Paul Varacalli, Local 390 Representative
F.A.C.E. Board of Directors

F.A.C.E.
Fremont Association of City Employees

May 4, 1976

John Jaeger, Employee Relations Officer
City of Fremont
City Government Building

Dear Mr. Jaeger:

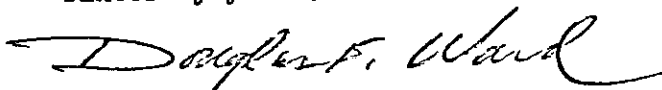
The F.A.C.E. Board of Directors have decided to initiate an election in regards to either affiliating or not affiliating with United Public Employees Union, Local 390, AFL-CIO. As you know, there have been several meetings concerning possible affiliation by F.A.C.E. employees and a petition filed by the Police Technicians Unit to affiliate. Due to the interest displayed, an election will be held to determine representation.

The date of Tuesday, May 18, 1976 has been selected for this election to be held in the employee's Coffee Room #209 at the City Government Building. I would appreciate your assistance in providing an active list of F.A.C.E. paid members so that an election roll may be prepared. Additionally, I would appreciate the assignment of an election supervisor from your staff to assist with the election. Voting time is scheduled from 11:45 am to 12:30 pm and 5:00 pm to 5:30 pm.

Finally, I want to emphasize that this election is in regards to possible affiliation for the purposes of meet and confer representation and not a decertification of F.A.C.E. F.A.C.E. will continue as a recognized employee unit in its present structure regardless of the election outcome.

Thank you for your cooperation.

Sincerely yours,



Douglas F. Ward
F.A.C.E. President

cc: F.A.C.E. Board of Directors

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.