



MEMORANDUM HUMAN RESOURCES

To: Honorable Board of Supervisors
From: Lori Walsh, Human Resources Director
Subject: Appeal by Placer Correction and Probation Officers Association

Date: July 26, 2016

ACTION REQUESTED

Regarding the Placer Correction and Probation Officers Association appeal of the County Employee Relations Officer's determination that the proposed unit was not an appropriate unit: (1) adopt, modify or reject the third party Hearing Officer's recommendation to the Board to deny the PCPOA appeal, and (2) grant or deny the PCPOA appeal with findings.

FORM OF DECISION

The Board is requested to make a final determination granting or denying the PCPOA appeal and in so doing is requested to:

1. Affirm and adopt the hearing officer's written recommendation in its entirety, including the hearing officer's findings of fact; or
2. Affirm and adopt the hearing officer's written recommendation with modifications and direct staff to return to the board at a later date with proposed written findings of fact as to why the recommendation was modified; or
3. Reject the hearing officer's written recommendation and direct staff to return to the board at a later date with proposed written findings of fact as to why the recommendation was rejected.

BACKGROUND:

The Placer Correction and Probation Officers Association (PCPOA) has filed two petitions for severance, seeking to sever Correction Officers from the County's General Unit and Probation Officers from the Professional Unit. Pursuant to the County's Employer-Employee Relations Policy, the County's Employee Relations Officer reviewed the petitions, met with PCPOA, and determined the proposed separate unit of Probation and Corrections Officers was not an appropriate unit. PCPOA filed an appeal.

On September 1, 2015, the Board voted to refer the dispute to a third party hearing officer to hold a hearing and issue a recommendation to the Board.

On February 4, 5 and 17, 2016, Mr. Norman Brand, Esq. heard the PCPOA appeal. On May 13, 2016, Mr. Brand issued a written recommendation to the Board, recommending denial of the appeal of the Employee Relations Officer's decision. (Attachment "A")

The PCPOA and Employee Relations Officer have entered into a Stipulation pertaining to the Board's further consideration of the matter, which includes a recitation of stipulated facts, the procedural history, as well as the procedures for the parties to present their positions to the Board. (Attachment "B") The PCPOA and Employee Relations Officer have stipulated that each party will have an opportunity to address your Board at this meeting in the order provided and request an opportunity to speak as follows:

1. PCPOA representatives may speak first, for no more than ten minutes.
2. Employee Relations Officer representatives may speak next for no more than ten minutes.

3. As part of its reply, PCPOA may speak for no more than five minutes.
4. Any public comment as authorized by the Board

DISCUSSION:

Now that the Hearing Officer has issued a written recommendation, the matter has returned to the Board to issue a decision on the PCPOA appeal. Pursuant to the Employee-Employer Relations Policy, the Board's decision on the appeal is final and binding.

The record on appeal, to include the parties' arbitration stipulations, arbitration briefs, exhibits, and the transcripts of the hearing, including the Placer County Employer-Employee Relations Policy, Severance Petitions filed by PCPOA, Employee Relations Officer's Letters dated May 1, 2015 and July 29, 2015, in Response to PCPOA's Petitions, and PCPOA Appeal dated July 31, 2015, have been submitted to the Clerk of the Board of Supervisors for the Board's review and consideration.

Attachments:

- Attachment A: Hearing Officer's written recommendation
Attachment B: Stipulation for Board meeting July 26, 2016

On File with the Clerk of the Board and Available for Public Review (copies provided to the Board):

Record on Appeal (which includes all documents previously provided to the Board, all documents provided to the hearing officer, and the transcript of the hearing before the hearing officer).

Attachment A

In the Matter of an Appeal from an ERO
Determination under Section 11 of the Placer
County Employer-Employee Relations Policy

**PLACER CORRECTION AND PROBATION
OFFICER ASSOCIATION**

- and -

COUNTY OF PLACER

**HEARING OFFICER
RECOMMENDATION**

NB 3688

Unit Petition Appeal

Hearing Officer: Norman Brand, Esq.

Appearances:

For Placer Correction And Probation Officer Association
Mastagni Holstedt PC
By Joshua A. Olander, Esq.

For County Of Placer
Liebert Cassidy Whitmore, PC
By Donna M. Williamson, Esq.
Arlin Kachalia, Esq.

Date: May 13, 2016

Background

On February 6, 2015, Placer Correction and Probation Officer Association ("PCPOA") submitted petitions to sever the Deputy Probation Officer ("DPO") titles from the professional unit and Correction Officer ("CO") titles from the general unit, to create a new unit represented by PCPOA. On July 29, 2015, the County Employee Relations Officer ("ERO") issued his final determination that the new unit was not appropriate. PCPOA appealed the ERO determination and asked the Placer County Board of Supervisors ("Board") to appoint a Hearing Officer to hear the appeal. PCPOA and the County of Placer ("County") entered into procedural and factual stipulations for the proceedings before the Hearing Officer.¹ Hearings were held at the Board offices on February 4, 5, and 17, 2016. Each party had a full opportunity to examine and cross-examine witnesses, present evidence, and argue its position. Neither party objected to the conduct of the hearing. A court reporter recorded the proceedings. At the close of the hearing the parties asked to file post-hearing briefs. The last brief was received on April 15, 2016, at which time the hearing closed.

Criteria

The Placer County Employer-Employee Relations Policy ("EERP"), at Section 8, provides the following policy and standards for determining appropriate units.

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the County and its compatibility with the primary responsibility of the County and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on a recognized community of interest considerations. Thus policy objectives require that the appropriate unit shall be the broadest feasible grouping

¹ The relevant stipulations are reproduced below.

of positions that share an identifiable community of interest. Factors to be considered shall be:

- a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- b. History of representation in the County and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- c. Consistency with the organizational patterns of the County.
- d. Effect of differing legally mandated impasse resolution procedures.
- e. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- f. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Procedural Stipulation (Partial)

The PLACER CORRECTION AND PROBATION OFFICERS ASSOCIATION and the COUNTY OF PLACER, by and through their respective attorneys, hereby stipulate as follows:

A. PARTIES

The parties to this appeal hearing are: (1) the Placer Correction and Probation Officers Association ("PCPOA"), and (2) the County of Placer ("County") (collectively referred to as "the Parties").

C. HEARING OFFICER & RECOMMENDATION

The Parties agree that Norman Brand ("Hearing Officer") will serve as the Hearing Officer for this hearing. After the presentation of the evidence and argument, the Hearing Office will issue a recommendation to the County Board of Supervisors regarding the issues presented.

The Parties understand and agree the Hearing Officer's determination is advisory only and the County Board of Supervisors has the sole authority to render a final decision regarding the issues presented.

D. ISSUE

The parties disagree as to the issue for consideration. PCPOA proposes the following issue:

"Is the proposed unit of Probation Officer and Correctional Officer classifications an appropriate unit?"

The County proposes the following issue:

"Has the PCPOA met its burden of proving that the Placer County Employee Relations Officer ("ERO") erroneously determined that the proposed unit of the Deputy Probation Officer and Correctional Officer classifications was inappropriate?"

E. STANDARD OF REVIEW

The parties disagree as to the appropriate standard of review. The County takes the position that the standard of review is an abuse of discretion, in that the Hearing Officer should give deference to the ERO's decision. On the other hand, PCPOA takes the position that the standard of review is de novo, with no deference to the ERO's decision. The parties will submit this issue to the Hearing Officer. Therefore, parties may submit argument regarding the appropriate standard of review in their post-hearing briefs for consideration and determination by the Hearing Officer.

F. RECORD OF PROCEEDINGS

The County has arranged for a court reporter for the proceedings, and the Hearing Officer has requested a real time court reporter. The costs of the court reporter will be shared equally by PCPOA and the County. Each party will be responsible for the cost of its own transcript. The costs of the Hearing Officer's transcript will be shared equally by the Parties. The Parties agree to discuss the costs of preparing and submitting the administrative record for the Board upon the parties' receipt of the Hearing Officer's advisory opinion.

G. COSTS

The costs of the Hearing Officer will be shared equally by PCPOA and the County. Each party shall also bear the cost of its own presentation, including, but not limited to, documentary exhibits, service fees, witness fees, and attorneys' fees.

J. RULES & EVIDENCE

1. Burden of Proof

As the petitioner/moving party, PCPOA bears the burden of proof by a preponderance of the evidence.

2. Rules of Evidence

The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but the hearing shall be expedited by the exclusion of irrelevant or unduly repetitious evidence. The rules of privilege shall be effective to the same extent they are recognized in civil actions.

3. Order of Evidence & Argument

a. PCPOA will present its opening statement first.

b. The County will be provided the opportunity present its opening statement.

c. Either side may then present witnesses in support of its position, with PCPOA presenting its witnesses first, followed by the County. Both parties will have the opportunity to cross-examine witnesses. PCPOA may also present witnesses on rebuttal.

d. The Parties agree to submit post-hearing briefs as set forth in section 4 below, in lieu of closing argument.

4. Post-Hearing Briefs

In lieu of closing arguments, the parties may submit post-hearing briefs. The parties will determine the deadline for submission of briefs at the time of the hearing.

Partial Factual Stipulation

Petitioner Placer Correction and Probation Officer Association ("PCPOA") and Employer Placer County ("County") hereby stipulate to the following facts for purposes of the instant matter only, up through, and including, the Board of Supervisors' consideration of this appeal. The parties reserve the right to call and cross-examine witnesses and introduce additional exhibits, other evidence or legal authorities to supplement this stipulation:

The parties stipulate as follows:

BARGAINING UNITS AND COMPOSITION

1. There are currently two (2) exclusive representatives representing employees within the County: (1) the Placer Public Employees Organization ("PPEO"); and (2) the Placer County Deputy Sheriff's Association ("PCDSA" or "DSA").
2. The PPEO represents two separate bargaining units: the Professional Unit and the General Unit. As of January 8, 2016, the number of employees in each unit is as follows:
 - a. General Unit: 1301
 - b. Professional Unit: 527The number of classifications in each unit is as follows:
 - a. General Unit: 245
 - b. Professional Unit: 86.During collective bargaining and successor memorandum of understanding negotiations, the County bargains with PPEO at one bargaining table, although PPEO represents two separate bargaining units.
3. The PCDSA represents one bargaining unit: the Law Enforcement Unit. As of January 8, 2016, the Law Enforcement Unit contains 230 employees, all of whom are peace officers under Penal Code section 830.1, unless otherwise noted. The classifications within the PCDSA are as follows:
 - a. Deputy Sheriff I
 - b. Deputy Sheriff II
 - c. Sheriff's Sergeant

- d. Sheriff's Lieutenant
- e. District Attorney Investigator
- f. Investigator-Welfare Fraud (peace officer status under Penal Code section 830.35)
- g. Investigator -Welfare Fraud, Supervising (peace officer status under Penal Code section 830.35)

As reflected above, the Law Enforcement Unit contains seven classifications. During collective bargaining and successor memorandum of understanding negotiations, the County bargains with PCDSA at a bargaining table, separate and apart from PPEO.

4. Petitioner PCPOA seeks to separate out Deputy Probation Officer classifications from the Professional Unit, and Correctional Officer classifications from the General Unit, and seek to form a new bargaining unit consisting solely of the Probation Officer and Correctional Officer Classifications. In February 2015, around the time PCPOA filed its Petition for Severance, the County employed a total of 101 bargaining unit employees in the Deputy Probation Officer classifications and a total of 97 bargaining unit employees in the Correctional Officer classifications.

5. The County currently maintains the following eight (8) classifications of the Deputy Probation Officer within the Professional Unit. Penal Code section 830.5 applies to Deputy Probation Officers. The number of bargaining unit employees in each classification, as of January 8, 2016, is also identified below:

- a. Deputy Probation Officer I- Field: 10
- b. Deputy Probation Officer I - Institution: 8
- c. Deputy Probation Officer II - Field: 52
- d. Deputy Probation Officer II - Institution: 9
- e. Deputy Probation Officer Senior-- Field: 9
- f. Deputy Probation Officer Senior- Institution: 4
- g. Deputy Probation Officer Supervising- Field: 6
- h. Deputy Probation Officer Supervising- Institution: 4

As of January 8, 2016, the number of bargaining unit employees in these Deputy Probation Officer classifications totals 102.

6. The County employs three (3) Correctional Officer classifications within the General Unit. ~~Penal Code section 830.55 applies to Placer County Correctional Officers.~~² The number of bargaining unit employees in each classification, as of January 8, 2016, is also identified below:

- a. Correctional Officer I: 15

² The County moved to strike this language at the hearing on the ground that it is incorrect. The Hearing Officer declined to permit it to be struck, but allowed evidence on whether Correctional Officers are peace officers under Penal Code §830.55. Lt. Swearingen testified convincingly that Correctional Officers are not peace officers under Penal Code §830.55. (Tr. 421:18-430:8) Captain Hutchinson testified to the same effect. (Tr. 500:5-507:21) Consequently, the line in the Stipulation has been struck to indicate that Correctional Officers are not peace officers under Penal Code §830.55. This corrected fact has been considered in assessing the community of interest between the different classifications.

- b Correctional Officer II: 81
- c Correctional Sergeant: 8

As of January 8, 2016, the number of bargaining unit employees in these Correctional Officer classifications totals 104.

BARGAINING UNIT HISTORY AND RELEVANT JOB/UNIT CHANGES

7. In 1997, the Correctional Technician classification was changed to Correctional Officer. At that time, some Correctional Technicians immediately transitioned to the Correctional Officer classification. Others remained Correctional Technicians (while obtaining additional qualifications for the position). The Correctional Technician classification no longer exists as it was phased out. The Correctional Officers, whether as Correctional Officers or Correctional Technicians, have historically been members of the General Unit. The Correctional Officer classifications continue to be members of the General Unit.
8. The Deputy Probation Officer classifications consist of two separate career track positions:
 - a) Deputy Probation Officer-Field;
 - b) Deputy Probation Officer-Institution.
9. The Deputy Probation Officer- Field classification has held similar titles since the 1970s. Between 1970 and 1972, this classification consisted of:
 - Probation Officer I
 - Probation Officer II
 - Probation Officer III
 - Assistant Probation Officer

These classifications historically belonged to the Law Enforcement Unit until 2008, at which time they joined the Professional Unit.
10. The Deputy Probation Officer-Institution has had several titles and job duty changes over the years. This classification has historically been assigned to work in the Juvenile Hall, which at the County is now known as the Juvenile Detention Facility (JDF). The classifications that served as the predecessor to the Deputy Probation Officer-Institution classification were members of the General Unit until 1995. In or about 1995, they joined the Law Enforcement Unit. In 2008, they left the Law Enforcement Unit and joined the Professional Unit, and continue to be members of the Professional Unit.
11. The classification history of the Deputy Probation Officer-Institution, beginning in 1970, is as follows:
 - a. Between 1970 and 1972, the classification titled Group Supervisor staffed the County's Juvenile Hall.
 - b. In 1972, the Group Supervisors were split into Group Supervisor I and Group Supervisor II classifications. The County also created the classification of Senior Group Supervisor.
 - c. In 1974, the County created Counselor I and II and Senior Counselor classifications which staffed the County's then-operating Juvenile

- Treatment Center. These classifications required a higher level of skill than the Group Supervisor classification, but had similar duties.
- d. In 1982, the Juvenile Treatment Center closed and re-opened as a shelter. As a result, the County reorganized the Counselor classifications, as follows:
 - Group Counselor I (replacing Group Supervisor I and Counselor I)
 - Group Counselor II (replacing Group Supervisor II and Counselor II)
 - Senior Group Counselor (replacing Senior Counselor)
 - e. Between 1995 and 1997, the Group Counselor I and II and Senior Group Counselor classification titles changed to the classification of Probation Specialist (and continued working in Juvenile Hall). In or about 1995, the Probation Specialists left the General Unit, and became members of the Law Enforcement Unit. The Probation Officer classifications (those working in the field) continued to be members of the Law Enforcement Unit.
 12. In 1997, the County combined the Probation Officer I, II, III and Assistant Probation Officer classifications with the Probation Specialist classification. The County renamed them as follows:
 - Deputy Probation Officer Trainee
 - Deputy Probation Officer I
 - Deputy Probation Officer II
 - Senior Deputy Probation Officer
 13. On or about February 4, 2005, the County separated the Probation Officer classifications into two separate career tracks and renamed them to the classifications that exist presently: a) Deputy Probation Officer- Field; and b) Deputy Probation Officer -Institution. The Institution is the Juvenile Detention Facility. At the time, the Probation Officer classifications continued to be members of the Law Enforcement Unit.
 14. In 2008, the eight (8) Deputy Probation Officer classifications severed from the Law Enforcement Unit, and joined the Professional Unit. The Deputy Probation Officer classifications continue to be members of the Professional Unit.

PROCEDURAL HISTORY OF CURRENT PETITIONS

15. On February 6, 2015, PCPOA submitted to the County two (2) separate petitions for severance, seeking to sever Probation Officers from the Professional Unit and Correctional Officers from the General Unit, and for recognition of a separate unit consisting of Probation and Correctional Officer classifications.
16. On May 1, 2015, the County Employee Relations Officer ("ERO") issued the County's initial written response and determination that the proposed unit of Deputy Probation Officers and Correctional Officers was not an appropriate unit.

17. Thereafter, PCPOA requested to meet with the ERO. The meeting was held on June 1, 2015.
18. On July 29, 2015, the ERO informed PCPOA his position remained unchanged, and informed PCPOA of the reasons for his determination, in writing.
19. On July 31, 2015, PCPOA submitted to the Clerk of the County of Placer Board of Supervisors an appeal of the County ERO's determination.
20. In its July 31, 2015 appeal notice, PCPOA requested, "the Board of Supervisors exercise its discretion and refer the dispute to a third party hearing process."
21. On September 1, 2015, the parties appeared before the Board of Supervisors, at which time the Board ordered the appeal to be heard by a third party hearing officer, who would submit a proposed decision to the Board of Supervisors for a final decision.

Standard of Review

The parties agree the EERP is silent about the standard the Board will use to review an ERO decision when an employee organization files an appeal under Section 11 ("Appeals"). The County makes three arguments to support its position that an appeal of the ERO determination is limited to determining whether the ERO abused his discretion in deciding as he did. First, it asserts PERB will use the standard of "reasonableness" to review the final determination of the Board. The County equates "reasonableness" with "abuse of discretion" and concludes that the Hearing Officer must use the abuse of discretion standard to review the ERO determination "in accordance with the County's EERP and applicable law." (Opening Brief, 10:6-8) Second, the ERO is "solely responsible" for unit determinations, which is consistent with the Meyers-Millias-Brown Act ("MMBA") making unit determinations the responsibility of the public agency. If the Hearing Officer fails to accord deference to the ERO determination, that would improperly nullify the authority the EERP gives to the ERO. Third, the ERO has superior knowledge of County operations and a unique status under the EERP. It would

violate principles of judicial economy to consider evidence he did not see.

Consequently, the Hearing Officer should defer to the ERO's determination and review it only for abuse of discretion.

PCPOA makes two arguments from the EERP's silence about a review standard. First, it cites the Black's Law Dictionary definition of an "appeal" as a "review and possible reversal by a higher court." The term "appeal" does not include any limitation on what is reviewed. In the absence of any specific EERP limitation on the word "appeal" none should be implied. The normal review standard is *de novo*, and that is the standard by which the Board (through the Hearing Officer) should review the ERO determination. Second, PERB will review the Board's final determination for "reasonableness." Reasonableness is not, as the County asserts, identical to "abuse of discretion." Reasonableness is a standard that requires the Board to consider all of the relevant evidence in reaching its determination. If the Board were to apply an "abuse of discretion" standard in reviewing the ERO's determination, it would fail to consider relevant evidence, endangering the finality of its determination if PERB were to review the Board determination.

The Hearing Officer finds *de novo* is the correct standard to use in this appeal of the ERO determination. There are three reasons for this finding. First, nothing in the EERP limits the Board's review of the ERO determination to deciding whether he abused his discretion. Second, nothing in the law requires appeals of the ERO determination to be limited to deciding whether the ERO abused his discretion. PERB does not review the Board's final determination for abuse of discretion; it uses a reasonableness standard. The County has not shown "abuse of discretion" and

"reasonableness" are identical standards. Moreover, the County has not shown that where a public employer has adopted rules under the MMB, and those rules allow an appeal from the determination of the initial decision maker, the appeal must be deferential. Third, using the *de novo* standard ensures that if PERB reviews the Board's decision it cannot find the Board unreasonably refused to hear evidence relevant to its unit determination.

The Hearing Officer finds the appropriate issue to be: "Is the proposed unit of Probation Officer and Correctional Officer classifications an appropriate unit?" In light of that issue, he has considered all of the evidence provided by PCPOA to determine the propriety of the ERO's determination, in accordance with the criteria contained in Section 8 of the EERP.³

Discussion

The EERP requires the appropriate unit to be "the broadest feasible grouping of positions that share an identifiable community of interest." It establishes six factors to be considered. Each is considered below in light of the stipulated evidence and the evidence presented at the hearing.

³ The parties stipulated that PCPOA has the burden of proving its proposed unit constitutes an appropriate unit under Section 8. Contrary to the PCPOA assertion, the Hearing Officer finds the County does not have a burden of proving the Correctional Officers share a greater community of interest with other classifications.

a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.

WORK PERFORMED

PCPOA asserts a community of interest between Correctional Officers and Deputy Probation Officers ("DPOs"), based on the similarity of the general work they perform. It argues that Correctional Officers("COs") and Deputy Probation Officers-Institutional ("DPOs-I") maintain the custody and welfare of offenders and the security and safety of the institutions. Deputy Probation Officers-Field ("DPOs-F") supervise those same offenders after release. All supervise offenders with the goal of rehabilitation through behavior modification, treatment, educational and vocational programs. These goals and high level generalizations are not inaccurate, but they fail to address the specific kinds of work each classification actually performs. The work of DPOs-F, who comprise 75% of the DPOs, is substantially different from the work performed by COs. The work of DPOs-I is similar to the work of COs in that both have custodial responsibilities. The differences in their responsibilities for those in custody, however, are more substantial than the similarities.

The largest portion of DPO-F work is done in the field supervising probationers, working with juveniles, preparing reports for courts, appearing in court, investigating, and enforcing conditions of probation. (Tr. 255:18-261:4; Ex. 17) The testimony illustrates the scope of the work done by DPOs-F:

... post-release supervision [of] offenders coming out of prison, ... offenders coming out of jail on what's considered a local prison term under AB 109, realignment.

We write court reports for the courts and make recommendations, either for prison or probation. Included in that is case planning and

recommended terms and conditions. As part of that process we have to evaluate and properly apply rules of court, Penal Code sections, sentencing law, credits law. We create case plans by doing risk assessments and needs assessment. And we target ... criminogenic factors that cause people to offend ... usually by the most acute to the least acute to try to reduce recidivism.

We conduct citation and traffic hearings in the juvenile realm, which means citations that come in from law enforcement that aren't mandatory referrals to the DA. We handle them in-house and our juvenile traffic hearing officers are actually sworn in by Superior Court judge and they're able to give consequences, including license suspension that's valid with DMV.

We process juvenile referrals ... We search homes and vehicles and people and under the terms and conditions of probation in the 4th Amendment waiver.

... We have ... juvenile field staff that are involved ...[with] ... diversion programs for juveniles to keep them out of the system and to try to keep them from becoming wards of the court. We supervise informal probation under 654 W and I and 725 W and I. ... we make recommendations to the court when there's -- for new offenses, and also for violations of probation. And then we also have staff that provide cognitive behavioral interventions. ...that's meant to make juveniles change their thinking in response to things. (Tr. 255:24-257:17)

DPOs-F visit the jail and interview incarcerated inmates to develop their post-release plans. (Tr. 27:21-14) Two DPOs-F work in the jail itself:

... one of our staff does OR reports, own [re]cognizance reports, and makes recommendations to the court for release for participation on our pretrial services programs, and/or recommends no release or just continued -- just bail potential release. And then we have another staff in the jail that does initial in-takes for our probationers being released; goes over their terms and conditions, does case planning and identifies participants for our reentry program. (Tr. 258:8-16)

The DPOs-F, who comprise 75% of the DPO classification, perform almost all of their work outside of the jail.

DPOs-I work in Juvenile Hall. (Tr. 308:17-23) Although it is supposed to be a "home like environment," rather than a jail, it has locked doors and is secure. (Tr. 858:8-16) They are not armed, although one or two DPOs-I work as transportation officers and are armed when performing those duties. (Tr. 246:6-14) DPOs-I make initial detention decisions, based on whether the juvenile is a risk to himself or others. (Tr. 336:21-337:11) They are primarily counselors, implementing the Positive Behavior Intervention and Sports ("PBIS") program, which attempts to change behavior based on positive reinforcement. Juveniles are not locked in cells, but are out in common areas on the housing unit throughout the day. (Tr. 330:14-333:3) DPOs-I monitor behavior and interact with the juveniles throughout the day, sitting down with them regularly to reinforce proper behavior through rewards and to suggest alternative strategies. (Tr. 333:18-349:6)

The primary task of COs is to maintain the security of the jail and the safety, security, and welfare of the inmates. (Tr. 402:10-12) The vast majority of COs work in booking, housing, or floor officer positions. (Tr. 406:21-23)

Booking Correctional Officers:

... accept new arrestees that come in off the street, ... get transported in from other counties... or ... from the state ... bring them in, do a short medical questionnaire, a short classification questionnaire, asking things about gang affiliation, any past charges or history, working in a law enforcement profession to ensure their safety. ... pat them down for weapons. They'll take their shoes from them; any belts, jewelry, anything like that. Valuables cell phones, wallets, seal it up and put it in a property bag and move the inmate over to like a holding-type cell until they're ready to be booked. ... call out to the booking area and have the CO, the correctional officer or deputy, bring that arrestee over to a chair where

they can sit and be asked more questions. They'll be booked into the system. ... they ... continue the process by fingerprinting them, taking a photograph. ... house them in a cell until they get ready to be dressed and sent down the hall, once they're classified where they're going to stay. (Tr. 402:21-404:4)

Housing Correctional Officers:

... they're in a secured room that only they can allow people in and out of that room by pressing a button. It's an electronic keyboard. And so what they'll do is they'll monitor movement throughout the jail and basically authorize whether somebody can go through a door or not.

They'll do some data entry for Title 15 Activities. So if an inmate gets out of the room for day room or out of the room for rec yard, they'll do that data entry into the JMS, to show they got out of the room or showered, or whatever they wanted to do. And they are responsible for watching the officers on cameras as they're walking through doing their hourly or half hour checks of the inmates and move them throughout the facility to allow ingress and egress. (Tr. 405:4-18)

Floor Correctional Officers:

... generally start their day with a head count; get a list of the inmates that belong in the facility, the area where they're responsible. They'll physically go around and do a head count of those inmates. They'll match up their count with the inmate head cards that are kept in a binder ... to make sure that it's accurate. And they just check on their welfare to make sure that they're not injured or hurt or in some dire need of some medical help.

They'll check their wristbands to make sure that they have the right person in the right cell.

Once they finish with that duty they generally just spend their morning or afternoon doing once an hour checks and in some of the areas of the jail they're required to do twice an hour checks. And then they document that they did those... (Tr. 405:22-406:13)

There are a total of 13-14 special Correctional Officer positions:

- 2 Laundry officers (responsible for laundry)
- 2 Facilities officers (responsible for contractors inside and inmate repairs)
- 2 CalTrans officers (responsible for inmates cleaning the sides of roads)
- 1 Fleet services manager (supervises inmates working on fleet vehicles)
- 2 Program Unit Cos (one CO and one Sgt. who facilitate programs for

inmates, but do not teach them)
4-5 Classification officers (responsible for applying a decision making matrix to assign inmates to housing with the proper level of security)
(Tr. 407:10-416:2)

Although 13-14% of the Correctional Officer classifications are engaged in special duties, only the Program and Classification Cos (6-7%) do work that might be generally similar to the kind of work performed by DPOs. The differences are discussed below.

PCPOA asserts that changes required by AB109 have increased the similarity of work performed by COs and DPOs-F. It argues that DPOs-F now begin supervision while the offender is in custody and that they now coordinate and collaborate with COs in the Placer Re-Entry Program ("PREP"), which is run by the Probation Department, using teachers from the Sacramento County Office of Education. (Tr. 86:17-24) In response to questions about the specific responsibilities of COs, the testimony was vague. All COs "refer" inmates to PREP, encourage them to stay in, and talk to Siri⁴ or DPOs about the program. (Tr. 139:19-142:4) Siri is the CO assigned to the Program Unit, who is responsible for the actual tasks related to the PREP program. The testimony about this "collaboration" between COs and DPOs-F does not support the PCPOA argument that the general kinds of work the two classifications do is similar.

Although DPOs and COs both perform searches and seizures, that duty does not show the general work they perform is similar. COs conduct searches and seizures within the jail, searching new arrestees, inmates, or a cell. DPOs do them in the field – on the streets, in a probationer's home, or in some other non-institutional setting. DPOs-F are armed when they perform searches and seizures, COs are not. DPOs-F must be prepared to arrest a probationer with contraband. Consequently, they are required to

⁴ The person, not the iPhone persona.

work in pairs. (Tr.97:19-98:7) The different locations in which COs and DPOs-F conduct searches and seizures requires different skills and equipment. The fact that both perform searches and seizures does not demonstrate the work of the two classifications is similar.

QUALIFICATIONS REQUIRED

The training required for an entry level DPO-F is:

Equivalent to a Bachelor's degree from an accredited four-year college or university with major course work in corrections, criminal justice, or a closely related field. (Ex. 17)

The training required for an entry level DPO-I is:

An Associate of Arts degree or equivalent (completion of 60 units at an accredited college, with at least 9 units in the behavioral sciences). Experience as a group or youth counselor, or other paid, full-time experience in related juvenile work may be substituted on a year-for-year basis for the required education. (Ex. 18)

The training required for an entry level Correctional Officer is:

Completion of twelfth grade or G.E.D. College level coursework in law enforcement of a related field is preferred. (Ex. 23)

Once hired, both COs and DPOs are required to take core courses in their fields that are mandated by the Board of State and Community Corrections and Penal Code §832 (Search and Seizure). DPOs are additionally required to meet the minimum standards for Peace Officers (GC §1029 and 1031), take a psychological examination, and, if a DPO-F, qualify with firearms. (Ex. 17, 23, 50) This difference in training reflects the difference in status. DPOs are Peace Officers with the power to perform a "fresh"

arrest for a crime, and to carry firearms in the scope of their duties.⁵ Correctional Officers are forbidden from carrying firearms in the scope of their duties, and do not have authority to make a "fresh" arrest, except inside the jail. (Tr. 402:2-4)⁶

The qualifications required for actually doing the jobs are quite different. The DPO-F job requires significant analytic skills. For instance, they are required to interpret and apply court orders. (Tr. 351:19-352:24) This is reflected in their current placement in the Professional Unit. Correctional Officers are in the General Unit. PCPOA asserts booking officers and COs who work as classification officers also do analytical work. Booking COs fill out medical and housing questionnaires containing the responses to questions they ask the arrestee. The questionnaire dictates whether someone is sent to a nurse, and where they are initially housed. This requires intelligence and an ability to detect untruthfulness, but not significant analytic skills. The County claims the 4 or 5 COs who are classification officers merely apply a matrix to determine the proper housing unit for new inmates. Assuming *arguendo* these 4 or 5 COs do analytic work, they represent only 5-6% of the overall unit. For the other 95% of COs, the job does not require significant analytic skills.

PCPOA points out that both jobs require honesty, integrity, the ability to make good decisions under stressful conditions, and good verbal and written communication skills. In addition to these general qualifications, both jobs require the specific ability to physically manage criminals, either in jail or on the streets. While these generalizations are not inaccurate, a significantly higher level of skills is required by DPOs-F. They are regularly required to appear and testify in court, making substantial verbal skills, a

⁵ A "fresh" arrest is for a new crime, rather than a violation of conditions of probation. (Tr. 77:8-12) DPOs are statutorily authorized to carry firearms, but only DPOs-F regularly carry them. (Tr. 245:24-246:14)

⁶ No such fresh arrest has ever occurred. (Tr. 431:5-10)

significant part of their work. COs could be called to testify about an event they observed in the jail, but testifying in court is not a regular part of their duties. DPOs-F write pre-sentencing, sentencing, and probation violation reports. Making reasoned written recommendations to the courts is a substantial part of their job. (Tr. 256:4-13; 260:8-19) COs write incident reports. (Tr. 172:9) Writing incident reports is not similar to writing analytic reports that judges rely on for sentencing.

GENERAL WORKING CONDITIONS

Correctional Officers work 10 and 12 hour shifts. (Tr. 115:9-11) They wear a badge and one of four uniforms, varying from a formal uniform with a long sleeve shirt and tie, to a one piece jumpsuit that can only be worn in the jail. (Tr. 400:15-401:15) With some minor exceptions, all of their work is inside a secure facility. DPOs-F work:

... 9-80, which is nine hours a day, which gives them either a Monday or a Friday off of the next week. So within a two-week period you work 80 hours. (Tr. 33:14-17)

They do not wear a uniform, although they are required to wear protective gear when armed in the field. (Tr. 252:14-253:8) Almost all of their work is in the field, although they may spend some time in the jail to get information from COs or inmates. DPOs-I work 3 day or graveyard shifts of 12 hours each, and one 8 hour shift on the day following their last 12 hour shift. (Tr.320:13-321:3) DPOs-I wear a black shirt with a star and are issued a jacket they have the option of wearing. (Tr. 326:14-24) Almost all of their work is in Juvenile Hall, a secure facility. There are clear similarities in working conditions between COs and DPOs-I. The general working conditions for DPOs-F are not similar to the CO's working conditions.

One working condition is the same for both groups. DPOs, because they are peace officers, are entitled to rights under the Police Officers Bill of Rights ("POBR"). The Sheriff's Department is obliged to provide POBR rights to Deputies, and chooses – for the sake of uniformity – to provide POBR rights to all Department employees. (Tr.440:9-441:8) COs enjoy the same working condition as DPOs when they face discipline, or are placed on a *Brady* list. Unlike DPOs, however, they have no entitlement to that working condition. A new Sherriff could eliminate the working condition by fiat. Because of its impermanence, this similarity is not a strong indication of a community of interest.

FINDINGS:

The general kinds of work performed by COs and DPOs-F are not similar. There are superficial similarities between the work of COs and DPOs-I because both work in secure facilities. Overall, however, the type of work they do in those facilities is very different. COs are chiefly concerned with maintaining security for inmates and the institution, while DPOs-I are chiefly concerned with changing the behavior of juveniles. The lack of similarity of work performed, qualifications, and general working conditions argues against the existence of a community of interest between COs and DPOs.

b. History of representation in the County and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.

The history of representation of COs and DPOs is spelled out in the stipulations. While COs have always been in the General Unit, DPOs have moved between law

enforcement and professional units. This shows some instability in the bargaining relationship. The evidence shows that 83% of the total COs and DPOs who would be in the new PCPOA unit signed the petitions to sever. (Tr. 56:1-25) As PCPOA argues, this is evidence these employees are unhappy with their current representation. While there was testimony about why PCPOA members are unhappy with their current representation, that is not the subject of this hearing. Nevertheless, the dissatisfaction with current representation is a factor that argues for creating the new, combined PCPOA represented bargaining unit.

FINDINGS

The history shows DPOs have been unsatisfied with their representation in existing units. The petitions show most of the employees in the affected classifications want to be represented by PCPOA. While this is not a sole basis for making a unit determination, it argues in favor of severing the proposed PCPOA unit.

c. Consistency with the organizational patterns of the County.

The County argues the proposed unit is inconsistent with its existing organizational pattern. It currently has three units, with police, general, and professional employees each in a separate unit. The PCPOA unit would mix police and non-police employees, as well as professional and non-professional employees, in the same unit.⁷ This unit would be inherently unstable in two ways. Professional employees are entitled to be in a unit of only professional employees. Peace officers are entitled to be in their

⁷ PCPOA argues that COs are professional employees who are currently mis-classified as non-professional employees. The Hearing Officer has no authority to determine the propriety of classifying COs as non-professional employees and cannot consider the argument.

own unit. DPOs would have a right to break out of the PCPOA unit at any time, leaving a unit comprised solely of COs.

FINDINGS

Mixing law enforcement, general, and professional employees in a single unit is inconsistent with the organizational patterns of the County. This argues against finding a community of interest among these different categories of employees.

d. Effect of differing legally mandated impasse resolution procedures.

There are no different legally mandated impasse resolution procedures for the classifications in the proposed PCPOA unit.

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

The County makes four arguments on this criterion. First, the addition of a fourth bargaining unit would decrease its efficiency because it would have to meet separately to negotiate with the new bargaining unit. Second, it would still have to negotiate different terms and conditions of employment for DPO and CO classifications, as it does currently. Third, creating a new bargaining unit would fragment the existing bargaining units. Fourth, creating a new bargaining unit would encourage other classifications with unique concerns to seek their own bargaining units. None of these arguments is convincing.

First, while it is true that creating another bargaining unit would require separate negotiations, any loss in "efficient operations" derives from the fact that the MMB gives County employees the right to bargain. While it is always more efficient to bargain with fewer unions, that efficiency cannot override the right of employees to bargain in appropriate bargaining units. Second, having to negotiate separate terms and conditions for the different classifications in the proposed unit is the status quo. Creating a PCPOA bargaining unit does not change the status quo, or make the County less efficient. Third, the EERP addresses the fragmentation of classifications, not bargaining units. Creating a CO/DPO bargaining unit does not fragment any classifications; all of the related classifications would be in the same unit. Finally, whether creating a new bargaining unit encourages other employees to seek new bargaining units is irrelevant. The criteria for bargaining units remain the same. If other employees should be in different bargaining units, that is a judgment that will be made through consistent application of the EERP.

FINDINGS

Creating a PCPOA bargaining unit will neither fragment classifications, nor represent a proliferation of bargaining units. The County will have a total of four, rather than three bargaining units. It will require the County to bargain with a single additional union. Moreover, under existing law the DPO classifications are entitled to their own bargaining unit. Thus, creating the PCPOA bargaining unit will not require the County to bargain with any more entities than they can be obliged to bargain with under existing law.

f. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

This criterion is inapplicable. No classification would be divided among units by creating a new unit. No related classifications would be divided among units by creating a new unit.

Summary

The chief questions presented by this appeal are whether a PCPOA bargaining unit would: 1) provide "employees with effective representation based on a recognized community of interest considerations;" and, 2) would "be the broadest feasible grouping of positions that share an identifiable community of interest." The evidence shows the petitioning employees are dissatisfied with the representation provided by their current bargaining representative. But the test of "effective representation" under the EERP is not the performance of a specific bargaining representative. It is ability of a bargaining representative to represent employees "based on a recognized community of interest considerations." PCPOA has shown there are common high level goals among the classifications it seeks to represent. It has not shown the classifications have a "community of interest" as that is defined in criteria "a" and "c" of the EERP. Nor has it shown that a bargaining unit comprised of professional and non-professional employees, peace officers and non-peace officers, is the broadest feasible grouping with an identifiable community of interests. Moreover, the proposed unit is both small

and inherently unstable because the DPO classifications have the right to their own bargaining unit, or to move back to the law enforcement bargaining unit if they choose.

Recommendation

The Hearing Officer recommends the Board of Supervisors deny the appeal from the ERO's determination not to sever DPO and CO classifications to create a PCPOA represented bargaining unit.

San Francisco, California
May 13, 2016


Norman Brand

Attachment B

Liebert Cassidy Whitmore
A Professional Law Corporation
135 Main Street, 7th Floor
San Francisco, California 94105

1 Donna M. Williamson, Bar No. 147205
dwilliamson@lewlegal.com
2 Arlin Kachalia, Bar No. 193752
akachalia@lewlegal.com
3 **LIEBERT CASSIDY WHITMORE**
A Professional Law Corporation
4 135 Main Street, 7th Floor
San Francisco, California 94105
5 Telephone: 415.512.3000
Facsimile: 415.856.0306

6
7 Attorneys for Employer/Respondent
COUNTY OF PLACER

8 Joshua A. Olander, Bar No. 249292
jolander@mastagni.com
9 **MASTAGNI HOLSTEDT**
A Professional Law Corporation
10 1912 I Street
Sacramento, California 95811
11 Telephone: 916.446.4692
Facsimile: 916.447.4614

12 Attorneys for Petitioner
13 **PLACER CORRECTION AND PROBATION**
OFFICERS ASSOCIATION

COUNTY OF PLACER
BOARD OF SUPERVISORS

18 **PLACER CORRECTION AND**
PROBATION OFFICERS
19 **ASSOCIATION,**

20 Petitioner,
21 v.
22 COUNTY OF PLACER,
23 Employer.

Case No.: NB 3688

**JOINT STIPULATION OF PROPOSED
PROCEDURES FOR THE BOARD'S
FURTHER CONSIDERATION OF THE
PCPOA APPEAL, INCLUDING THE
BOARD'S CONSIDERATION OF HEARING
OFFICER'S WRITTEN RECOMMENDATION**

Date: July 26, 2016
Time: 10:00 a.m.
Location: County Administrative Center, 175
Fulweiler Avenue, Auburn, CA

26
27
28
78432683 PL060-018

JOINT STIPULATION OF PROPOSED HEARING PROCEDURES -JULY 26, 2016 BOS MEETING

Liebert Cassidy Whitmore
A Professional Law Corporation
135 Main Street, 7th Floor
San Francisco, California 94105

STIPULATION

The PLACER CORRECTION AND PROBATION OFFICERS ASSOCIATION (“PCPOA”) and the COUNTY OF PLACER (“County”), by and through their respective attorneys, hereby stipulate as follows:

I. PROCEDURAL HISTORY OF CURRENT PETITIONS

- A. On February 6, 2015, PCPOA submitted to the County two separate petitions for severance (one seeking to sever Deputy Probation Officers from the Professional Unit; and another seeking to sever the Correctional Officers from the General Unit) in conjunction with a petition for recognition of a new and separate unit consisting of the Deputy Probation Officer and Correctional Officer classifications.
- B. On May 1, 2015, the County Employee Relations Officer (“ERO”) issued the County’s initial written response and determination that the proposed unit of Deputy Probation Officers and Correctional Officers was not an appropriate unit, and denied the petitions.
- C. Thereafter, PCPOA requested to meet with the ERO. The meeting was held on June 1, 2015.
- D. On July 29, 2015, the ERO informed PCPOA that his position remained unchanged, and informed PCPOA in writing of the reasons for his determination.
- E. On July 31, 2015, PCPOA submitted an appeal of the County ERO’s determination to the Clerk of the County of Placer Board of Supervisors (“Board”).
- F. In its July 31, 2015 appeal notice, PCPOA requested that “the Board of Supervisors exercise its discretion and refer the dispute to a third party hearing process.”
- G. On September 1, 2015, the Board ordered that the appeal be heard by a third party hearing officer who would submit an advisory opinion to the Board for a final decision.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- H. A hearing was held before Norman Brand on February 4, 5 and 17, 2016.
- I. The parties were afforded a full opportunity to present oral testimony and documentation, and to examine and cross-examine each party's witnesses.
- J. A court reporter prepared a transcript of the proceedings.
- K. Following the hearing, the parties submitted initial and response post-hearing briefs to the hearing officer. The hearing officer then took the matter under submission.
- L. On May 13, 2016, the hearing officer issued his advisory recommendation, wherein he "recommends that the Board of Supervisors deny the appeal from the ERO's determination not to sever DPO [Deputy Probation Officer] and CO [Correctional Officer] classifications to create a PCPOA represented bargaining unit."

II. THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

- A. Issue. The issue before the Board is whether to grant or deny the PCPOA's appeal. To that end, the Board may: 1) affirm and adopt the hearing officer's written recommendation in its entirety; 2) affirm and adopt the hearing officer's written recommendation with modifications; or 3) reject the hearing officer's written recommendation. In the event that the Board rejects or modifies the hearing officer's written recommendation, it shall make written findings of fact as to why the recommendation was modified or rejected. Pursuant to the County's Employer-Employee Relations Policy, the Board maintains the authority to grant or deny the appeal, and such decision is final and binding.
- B. Documents for Review. To assist with the determination of the issue, the Board will be provided copies of this Stipulation and the County's Employer-Employee Relations Policy as well as the record on appeal, to include: 1) the Severance Petitions; 2) the Employee Relations Officer's May 1, 2015 and July 29, 2015 written response to PCPOA's petitions; 3) the PCPOA appeal letter of July 31, 2015; 4) the Parties' joint stipulation of partial facts for hearing (corrected) and

Liebert Cassidy Whitmore
A Professional Law Corporation
135 Main Street, 7th Floor
San Francisco, California 94105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

joint stipulation of procedures for the third party hearing; 5) the Parties' arbitration briefs and Exhibits; 6) the Hearing Officer's May 13, 2016 written Recommendation; and 7) the transcript of the hearing. Each Party shall submit six copies of their arbitration briefs and exhibits to the Clerk of the Board no later than Friday, July 15, 2016.

C. Objections/Written Response to Hearing Officer's Opinion and Recommendation.

Either party may submit a written letter brief to the Board of Supervisors in advance of the Board meeting on the appeal, with their respective positions regarding the hearing officer's opinion and recommendation. If a brief is submitted, it shall be submitted to the Clerk of the Board no later than 12 noon on Friday, July 15, 2016, and simultaneously email serve a copy of its brief upon counsel for other party: jolander@mastagni.com and akachalia@lcwlegal.com.

D. Opportunity to Address the Board. A meeting before the Board is planned for July 26, 2016. Each party will have an opportunity to address the Board on the appeal, in the order provided. The Parties request the Board allow each party to speak as follows:

1. PCPOA may speak first, for no more than ten minutes.
2. The County may speak next for no more than ten minutes.
3. As part of its reply, PCPOA may speak for no more than five minutes.
4. Normal Board procedures will be followed for any public comment.

E. Further Process. The Board may make a final decision on the matter at this meeting, continue the matter to a future Board meeting, set the matter for hearing before the Board or, within its discretion, may provide direction to counsel to prepare a written decision, or take the matter under submission and issue a written decision at a later time.

///
///
///

Liebert Cassidy Whitmore
A Professional Law Corporation
135 Main Street, 7th Floor
San Francisco, California 94105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. Final Decision. Pursuant to the County's Employer-Employee Relations Policy, the Parties acknowledge the decision of the Board shall be final and binding. However, this stipulation does not constitute a waiver of any right any party may have to appeal or otherwise challenge the Board's decision, as provided by law.

IT IS SO STIPULATED.

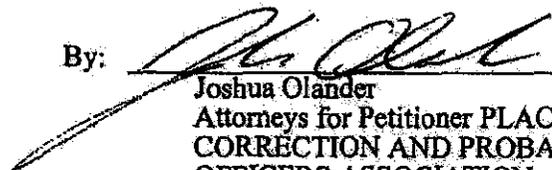
Dated: July 8, 2016

LIEBERT CASSIDY WHITMORE

By: 
Donna M. Williamson
Arlin Kachalia
Attorneys for Employer/Respondent
COUNTY OF PLACER

Dated: July 6, 2016

MASTAGNI HOLSTEDT, APC

By: 
Joshua Olander
Attorneys for Petitioner PLACER
CORRECTION AND PROBATION
OFFICERS ASSOCIATION