

MEMORANDUM
PLACER COUNTY
OFFICE OF THE COUNTY EXECUTIVE

To: Honorable Board of Supervisors
From:  Tom Miller, County Executive 
Mike Boyle, Asst. County Executive
Date: February 26, 2008
Subject: Determination of Bargaining Unit for Deputy Probation Officers

Issue:

The issue before your Board today concerns the labor bargaining unit determination for the Probation Officer series. Specifically, there are two union petitions and therefore two questions before your Board today.

- 1) Whether the Placer Public Employees Organization (PPEO) Professional Unit is an appropriate bargaining unit for the Deputy Probation Officer series, assuming that the Deputy Probation Officers vote to sever their relationship with the Placer County Deputy Sheriffs Association (DSA), and elect the PPEO as their exclusive union representative.
- 2) Whether the single DSA bargaining unit should be split into two bargaining units with the effect of the Deputy Probation Officers series belonging to a separate unit within the DSA, assuming that the Deputy Probation Officers stay in the DSA.

Recommended Action:

Find that the PPEO Professional Unit is an appropriate bargaining unit and that the proposed DSA bargaining unit split putting the Deputy Probation Officers in their own DSA unit is an appropriate bargaining unit, under the policies and standards set forth in the County's Employer-Employee Relations Policy, Article II, Section 8. Both Determinations are subject to the outcome of the upcoming election for severance and exclusive representation of the Deputy Probation Officer employees. The actual appropriate bargaining unit will coincide with the representation decision.

Legal Background:

Your Board is directed to the included memorandum from the County Counsel's Office which provides both the legal and procedural background for the current action being requested. Both unions and the appropriate bargaining unit employee members have been given notice of the filing of the PPEO and DSA petitions and that your Board would be taking action at this meeting to make determinations regarding appropriate bargaining unit(s) for the Probation Officer series. All affected union organizations have a right to be heard by the Board on unit determination issues.

The purpose of the Employer-Employee Relations Policy (EERP) is to allow for the orderly procedures for the administration of employer-employee relations between the County of Placer and its employee organizations. The EERP is discussed in County Counsel's memorandum.

Discussion:

February 1, 2008 – PPEO Petition Received

On February 1, 2008, the County received a Bargaining Unit Modification Petition filed by the PPEO and signed by approximately 71 of 91 Deputy Probation Officers. **(Attachment "A")** The petition requests that the County provide for an election to sever the DSA as their exclusive union representative and to instead select PPEO as their exclusive representative. The petition also requests that your Board approve a unit modification of the PPEO Professional Unit, to allow the deputy probation officers to be included in that unit should they vote to select PPEO as their representative.

February 15, 2008 – DSA Petition Received, and
DSA Objection to PPEO Petition Received

On February 15, 2008, the County received a Recognition Petition filed by the DSA. **(Attachment "B")** That petition requests that your Board approve a unit modification (or unit split) of the single DSA unit into two distinct bargaining units, such that the deputy probation officers would comprise their own unit within the DSA. The petition also requests that the DSA be included on the ballot in the election in which the deputy probation officers will vote on who their exclusive representative should be (Challenging Petition). In the same transmittal from DSA, on February 15, 2008, the County also received a formal objection to the unit modification petition filed by PPEO. **(Attachment "C")**

The Employee Relations Officer (County Executive Officer) has determined that both petitions were drawn up and filed in substantial compliance with the Employer-Employee Relations Policy (EERP). In making a bargaining unit determination, the EERP provides for application of several factors. A discussion of each of the EERP Section 8 policy objectives and factors as applied to these requests is provided below.

PPEO Petition, Section 8 Policy Objectives:

1. Effect of the proposed unit on, "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."

Discussion: The proposed unit modification is generally neutral as to this policy objective. However, County operations can be negatively impacted where a class of employees are dissatisfied with their exclusive union representative. The number of deputy probation officers who signed the PPEO Petition tends to support a conclusion that the deputy probation officers may be dissatisfied with their current representation by the DSA. Thus the proposed unit modification could mitigate against this potential negative impact.

2. Effect of the proposed unit in, "providing employees with effective representation based on recognized community of interest considerations."

Discussion: The EERP defines a "Professional Employee" as:

"... an employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including but not limited to attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical and biological scientists."

While the definition includes "specialized knowledge and skills attained through completion of a recognized course of instruction" it does not include the necessity of state or federal licensing. The Deputy Probation Officer I-Field specification (**Attachment "D"**) provides that the minimum qualifications for the position include the, "Equivalent to Bachelor's degree from an accredited four-year college or university with major course work in corrections, criminal justice, or a closely related field." Thus the minimum qualifications for a Deputy Probation Officer by definition describe "an employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction ..." "Professional Employees" as defined include a diverse grouping of occupations who are generally deemed to share a community of interest by

virtue of their inclusion under the "professional employee" definition. Thus the proposed unit modification supports this policy objective.

3. "The appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest."

Discussion: The PPEO Professional Unit, as the only professional unit in the County, is by definition the broadest feasible grouping of professional positions as that term is defined in the EERP. Thus the proposed unit modification supports this policy objective.

PPEO Petition, Section 8 Factors:

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

Discussion: Although the diverse occupations included as "professional employees" do not necessarily perform similar kinds of work or have similar qualifications with respect to each other or with respect to probation officers, by virtue of their inclusion in the "professional employee" definition their qualifications and working conditions are similar to the extent they are deemed to be different than the non-professional occupations. Under the MMBA, employees who are full-time peace officers have the right to join or participate in employee organizations which are composed solely of peace officers. However, they do not have to participate in such employee organizations. Here the Deputy Probation Officers will be making that choice. Thus the proposed unit modification satisfies this concern on a very general level.

"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."

Discussion: Deputy Probation Officers were once represented by PPEO in the general bargaining unit. In late 1985/ early 1986, the Deputy Probation Officers opted to move to the DSA citing Government Code section 3508 of the MMBA, which allows peace officers to join peace officer only unions as a matter of right. This factor not only takes into consideration a positive or stable history of representation, but also a negative or unstable history of representation by a union. The number of deputy probation officers who signed the PPEO Petition tends to support a conclusion that the deputy probation officers may be dissatisfied with their current representation by the DSA. Thus the proposed bargaining unit satisfies this concern.

"c. Consistency with the organizational patterns of the County."

Discussion: As all professional employees participate in a single unit and union, modification of the Professional Unit to include Deputy Probation Officers would be consistent with organizational patterns of the County.

"d. Effect of differing legally mandated impasse resolution procedures."

Discussion: As Peace Officers, the Deputy Probation Officers are identified as being entitled to binding interest arbitration of contract disputes pursuant to Code of Civil Procedure section 1299 et. seq. However, every California Superior Court which has had an opportunity to decide the issue has determined that this statutory scheme is unconstitutional and not binding on cities or counties. Thus there are currently no applicable differing impasse procedures which are relevant to this bargaining unit modification request, and this concern is satisfied.

"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."

Discussion: As the proposed unit modification would be moving the entire Deputy Probation Officer series from one existing bargaining unit to another existing bargaining unit this concern is satisfied.

"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."

Discussion: As the proposed unit modification would be moving the entire Deputy Probation Officer series from one existing bargaining unit to another existing bargaining unit this concern is satisfied.

DSA Objection to the PPEO Petition:

The formal objection contained some argument which cited to PERB Opinions. County Counsel's Office has reviewed the cited to PERB Opinions and has found that the Opinions related to legal standards other than that set forth in the MMBA, or do not strictly stand for the proposition for which they are cited, and/or do not support the position put forth in the DSA formal objection.

The formal objection complains that PPEO obtained deputy probation officer signatures inappropriately through coercive tactics perpetrated by deputy probation officer supervisors, that the County condoned this conduct through at least inaction, and therefore PPEO's petition must be disregarded to cure the unlawful conduct. This complaint was received by the County on February 15,

2008. This is the first notice that the County has of the alleged conduct. The County intends to look into these allegations to determine whether there has been any violation of the EERP or the County Code and will take appropriate action. As the Deputy Probation Officers will ultimately decide the issue of representation through a secret ballot, the election is itself an opportunity to clarify what the Deputy Probation Officers desire in this regard. It should be noted that the allegations run against supervisory employees who are not County managers acting on behalf of the County but are DSA members.

The objection contains as attachments written requests by seven deputy probation officers to revoke their signature/support from/of the PPEO Petition. Even if these constitute adequate revocation of support of the PPEO Petition, because of the number of unrevoked signatures remaining on the PPEO petition, the petition is unaffected and remains in compliance with the EERP.

DSA Petition, Section 8 Policy Objectives:

1. Effect of the proposed unit on, "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."

Discussion: The proposed unit modification is generally neutral as to this policy objective. However, County operations can be negatively impacted where a class of employees are dissatisfied with their exclusive union representative. The number of deputy probation officers who signed the PPEO Petition tends to support a conclusion that the Deputy Probation Officers may be dissatisfied with their current representation by the DSA. That dissatisfaction could be related, at least in part, to a conflict in the community of interest with the Deputy Sheriff due to the Proposition F salary ordinance. A separate bargaining unit within the DSA may work to alleviate dissatisfaction that may be caused by the salary ordinance. Thus the proposed unit modification may or may not mitigate against this potential negative impact.

2. Effect of the proposed unit in, "providing employees with effective representation based on recognized community of interest considerations."

Discussion: The Deputy Probation Officers would maintain their current representation with the DSA, however, in a separate unit. As the proposed bargaining unit would be comprised of a single series, Deputy Probation Officers, the members would necessarily have a significant community of interest. Thus the proposed unit modification supports this policy objective.

3. "The appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest."

Discussion: The proposed bargaining unit, comprised of a single series, Deputy Probation Officers, is by definition a very narrow grouping of positions with a shared community of interest. However, within the DSA, the Proposition F salary ordinance may be creating a schism in the "community of interest" between the Deputy Probation Officers and the Deputy Sheriffs because of a differing focus on salary versus benefits. Although other classifications represented within the DSA, such as District Attorney and Welfare Fraud Investigators, are not governed by Proposition F, a similar schism in the community of interest has apparently not occurred because their salaries have been benchmarked to the Deputy Sheriff salaries (which are set by the salary ordinance). Thus the proposed unit modification does not support this policy objective.

DSA Petition, Section 8 Factors:

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

Discussion: Because the proposed bargaining unit is comprised of a single series, Deputy Probation Officers, by definition the kinds of work performed, qualifications, and working conditions are all similar. Thus the proposed unit modification satisfies this concern on a very general level.

"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."

Discussion: The DSA has represented the Deputy Probation Officer series continuously since July, 1986. This factor not only takes into consideration a positive or stable history of representation, but also a negative or unstable history of representation by a union. The number of deputy probation officers who signed the PPEO Petition tends to support a conclusion that the Deputy Probation Officers may be dissatisfied with their current representation by the DSA. Thus the proposed unit modification may or may not satisfy this concern.

"c. Consistency with the organizational patterns of the County."

Discussion: As all peace officers in the County are represented by the DSA, the proposed unit split would be consistent with organizational patterns of the County. However, no other bargaining unit in the County is comprised of only one classification or series. To that extent the proposed unit would be inconsistent with the organizational patterns of the County.

"d. Effect of differing legally mandated impasse resolution procedures."

Discussion: As Peace Officers, the Deputy Probation Officers are identified as being entitled to binding interest arbitration of contract disputes pursuant to Code of Civil Procedure section 1299 et. seq. However, every California Superior Court which has had an opportunity to decide the issue has determined that this statutory scheme is unconstitutional and not binding on cities or counties. Thus there are currently no applicable differing impasse procedures which are relevant to this bargaining unit modification request, and this concern is satisfied.

"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."

Discussion: As the proposed unit modification would be moving the entire Deputy Probation Officer series from one existing bargaining unit to a new bargaining unit there would be no fragmentation of classifications. However, giving a single series its own unit, particularly in a county the size of Placer County, is probably a classic proliferation of units. In this instance, this factor is not governed by the MMBA rule that a peace officer group is entitled to join or participate in employee organizations which are composed solely of peace officers. The Deputy Probation Officers already belong to a peace officer only organization as part of the current DSA single unit configuration. Thus the proposed unit modification does not satisfy this concern.

"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."

Discussion: As the proposed unit modification would be moving the entire Deputy Probation Officer series from one existing bargaining unit to a new bargaining unit this factor is satisfied. Thus the proposed unit modification satisfies this concern.

Conclusion. Given that the totality of the discussion above regarding the EERP Section 8 policy considerations and factors: On balance it appears that the PPEO Petition request for inclusion of the Deputy Probation Officer classifications in the Professional Unit is acceptable under the County's EERP as an appropriate unit. On balance it appears that the DSA Petition request for a unit split giving the Deputy Probation Officers their own unit within the DSA is acceptable under the County's EERP as an appropriate unit.

The finding that the proposed DSA unit split creates an appropriate unit, was a very close call under the factors. But for the divide in the community of interest

apparently created by the Proposition F salary ordinance, staff could not recommend this unit split as appropriate. Otherwise on balance, it appears that the unit split would be inappropriate. If the Deputy Probation Officers remain with the DSA, and if Proposition F is repealed, then the balancing of equities which tips this determination toward the finding of an appropriate bargaining unit will no longer exist. At that time, staff may bring back a recommendation to your Board that your Board modify these units again to recreate the single DSA unit that has existed to date.

Attachments:

- A. PPEO Petition
- B. DSA Petition
- C. DSA Objection
- D. DPO Field

c: Chuck Thiel, PPEO
David Mastagni, DSA
Nancy Nittler, Personnel Director

