

Commission - Agenda Item 12a (Correspondence)

April 26, 2017

To: MTC Commission

From: Committee for Staff Representation

Dear MTC Commissioners:

The Committee for Staff Representation (CSR) is submitting this letter in response to the proposed Contract for Services contingency No. 2, which states "MTC must voluntarily recognize SEIU 1021 as the labor representative of the Transitioning Employees and to bargain with SEIU 1021 regarding employment with MTC."

CSR finds that this contingency contradicts the goal of the consolidation per the following:

1. MTC Resolution No. 4245 "Option 7" as recommended by Management Partners (attached), and
2. Directly contradicts the Commission approved MTC Resolution 743, Article II, which details the criteria for electing staff representation (attached)

CSR maintains that **MTC staff should self-determine its representation** through the end of the current MOU (June 2018), and that MTC staff should be unified through a single bargaining unit until such time as procedural due process is followed per Resolution No. 743 and a different Exclusively Recognized Employee Organization is elected to represent its staff. Multiple units within one organization with staff performing similar job functions can be divisive, and negatively impact the stability of employer-employee relationships. We care about MTC as an organization, and are committed to making it the best it can be. This includes ensuring fairness for both MTC and ABAG transitioning staff throughout this process.

As a bit of background, in 1979, MTC staff created, and then voted to recognize, under the Meyers-Milias-Brown Act, the Committee for Staff Representation as the Exclusively Recognized Employee Organization for MTC non-management, non-confidential staff. The CSR is governed under the Public Employment Relations Board (PERB) and, though we do not collect dues from our members, we are recognized as a "union" under the Bureau of Labor Statistics, U.S. Department of Labor. To ensure fair and equitable representation for all, the CSR Board is comprised of staff that have been elected by their peers and have positions across all classifications and sections. The size of the Board is a proportionate ratio of Board members to represented members. With the addition of transitioning staff, that proportion will be balanced out with the addition of two new Board members. Board members serve two year terms and elections are held annually to stagger the Board while maintaining continuity.

Since its creation, CSR has successfully negotiated a Memorandum of Understanding with MTC management every three to four years that has benefitted our represented staff, both current and future. We have worked tirelessly on various issues of importance to staff (e.g., maintaining a competitive salary and benefit structure consistent with the current market, increasing our CalPERS Retirement from 2.0 at 55 to 2.5 at 55, increasing the benefits for temporary employees, etc.), while always maintaining a positive relationship with MTC management and the Commission. For nearly four decades we have continued to successfully represent MTC staff without any labor strife, without third party intervention, and with full support of the Commission. Like ABAG, staff at MTC feel passionate

about representation, and see it as an important role within our organization. We remain committed to our role in advocating for and on behalf of represented staff now, and for the foreseeable future.

This CSR has been committed to the ABAG/MTC consolidation for the past year. Since our meeting with Commissioner Cortese and ABAG President Pierce last summer at our first Employee Relations Group (ERG) meeting, we have been diligently working on the specifics of the consolidation with members of SEIU, MTC and ABAG management. We have continued to meet (approximately) monthly, and our meetings have included the paid SEIU representative Julio Corral throughout this process along with the ABAG SEIU staff representatives. We have also had meetings with ABAG SEIU staff and CSR outside of the ERG meetings to discuss our shared concerns related to the staff consolidation, and work through any conflicting issues through peer discussion. In fact, in these informal meetings, CSR suggested the solution of adding three additional paid personal business days to address ABAG's concerns about vacation, for example. Throughout this process, we have worked diligently to forge a positive relationship with ABAG SEIU staff, and we continue to assert our commitment to achieving equity for both staffs during the transition.

Since the February Joint Planning/Administration Committee meeting, CSR has publicly stated that we fully support the transition plan that MTC and ABAG management have jointly developed with input from both SEIU and CSR represented staff. Our stance on this has not changed. CSR wants to ensure that transitioning staff are supported when they begin work at MTC in July. Many of the staff members at ABAG are our friends and close working colleagues. We want to begin immediately to bring the two staffs together to ensure the consolidation is a success, and will continue to be committed to this goal as one united staff. We know that, for some, we will need to heal wounds. But, we also know that, over time, the issues of the past year will fade, and we will be stronger together.

We appreciate your engagement on this issue, and we wanted to reach out to express our commitment to the consolidation process.

Thank you,

Committee for Staff Representation

Attachments:

Management Partners' Recommended "Option 7"
MTC Resolution No. 743, Article II

CC:

Hon. Jake Mackenzie, Chair: blumacjazz@aol.com

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estimates significant administrative cost savings over time from implementation of this option, the impact on the new agency's finances from potentially absorbing ABAG liabilities will need to be fully assessed before this option is implemented.

This option would also partially address having a more streamlined, accountable, and transparent PBA 2017 process by having a unified staff under a single director and executive director.

In addition to increasing staff accountability and reducing duplication of staff effort for PBA 2017, combining all planners into a single department should allow improvements to the policy process that prompt an increase in transparency and efficiency for decision makers. However, until a new agency and a new governance structure are created, policy decision-making will remain bifurcated and transparency may not improve significantly. Future PBAs would presumably fully achieve the goal of a more streamlined and transparent process under a unified agency.

With this option, Management Partners proposes transferring all ABAG planning staff to MTC, as there would be no basis for leaving the three programs at ABAG as proposed by 4210. By combining all planning, this option would allow the new planning department greater flexibility to undertake new initiatives in the near term while the new agency is being created.

As noted in the discussion about Option 4, the fundamental issue with creating a new agency revolves around the question of governance. It remains unclear whether there is the necessary consensus and trust among the region's local elected officials to move forward with creating a new regional agency and governance model. Entering into a memorandum of understanding (MOU) to do so would represent a formal agreement between the agencies to create a regional agency; however, depending on the rights and obligations set forth, it may or may not be legally binding.

Option 7 – Enter into a Contract between ABAG and MTC to Consolidate Staff Functions under One Executive Director and Enter into an MOU to Pursue New Governance Options (Functional Consolidation)

Both components of this option are intended to proceed simultaneously. This option would address two of the three identified problems and partially address the third. It would address the interest in having a more

accountable, streamlined and effective PBA 2017 process by combining all staff into one organization. Assuming appropriate agreements can be reached, this option could assist ABAG in addressing its financial challenges by allowing for a more cost-effective administrative structure, a realignment of programs and services, and the incorporation of all ABAG staff, programs and functions into a more financially stable and robust organization, with a different set of benefits and employee representation status. (The impact on current retiree benefits would need to be assessed.) Although Management Partners estimates significant administrative cost savings over time from implementing this option, the impact on MTC finances of absorbing ABAG staff and possible liabilities will need to be fully assessed before it is implemented.

ABAG would retain its role as a policy-making body, and would continue to provide oversight of its statutory responsibilities, as well as the services and programs under its purview. It would maintain its autonomy through a contract with MTC that sets forth roles and responsibilities, a work program and a budget to accomplish it. ABAG would have the authority to contract with consultants who can independently review work arising from staff to ensure it meets its interests and the intent of the contract. While the executive director would officially report to one oversight body (in this instance, the MTC Commission), Management Partners has seen many agencies where executive directors (or other chief executive officers) are responsible for meeting and balancing the interests of many competing stakeholder groups. In Washington DC and Chicago, the executive directors of the regional agencies have essentially two different governing boards whose interests they must address, and they have not indicated any significant issues in doing so. In other major regional agencies in the state, e.g., SACOG and SANDAG, the executive director must balance the interests of both the MPO and the COG, and does.

However, because there is no binding commitment to create a new regional agency or successor governance structure, this option would not address the issues associated with having two agencies with their own governing bodies responsible for the region's land use and transportation planning. This option proposes that the regional governance issue specifically be reconsidered at a designated date in the future. Nonetheless, adoption of this option could be perceived as a bridge forward toward that objective.

authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

1. "Professional Employee" means any employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction.

Section 3. Employee Rights

Employees of the Agency shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation (subject to the limitations set by this Resolution) on all matters of employer-employee relations. Employees of the Agency also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the Agency; provided, however, that an Exclusively Recognized Employee Organization alone may represent employees of an appropriate unit during meet and confer sessions with the Agency.

ARTICLE II -- REPRESENTATION PROCEEDINGS

Section 4. Filing of Recognition Petition by Employee Organization

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

- a. Name and address of the employee organization.
- b. Names and titles of its officers.
- c. Names of employee organization representatives who are authorized to speak on behalf of the organization.

- d. A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the Agency.
- e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the names and address of each such other organization.
- f. Certified copies of the employee organization's constitution and by-laws.
- g. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
- h. A statement that the employee organization has no restriction on membership based on race, color, creed, religion, sex, national origin, age, physical handicap, medical condition or marital status.
- i. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- j. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the Agency. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.
- k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

Section 5. Agency Response to Recognition Petition

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

- a. There has been compliance with the requirements of the Recognition Petition (i.e., the requirements of Section 4 of this Article II).
- b. The proposed representation unit is an appropriate unit in accordance with Section 9 of this Article II.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization, and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefor in writing. The petitioning employee organization may appeal such determination in accordance with Section 11 of this Resolution.

Section 6. Open Period for Filing Challenging Petition

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of

the employees in the same or in an overlapping unit (one which corresponds with respect to some but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 4 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 9 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 11 of this Article II.

Section 7. Election Procedure

- (a) The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with its rules and procedures subject to the provisions of this Resolution. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. The choice of "no organization" shall also be included on the ballot. Employees entitled to vote on such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days

before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the Agency in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority with respect to the employees eligible to vote in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

(b) No election shall be held and a petition shall be dismissed whenever:

- (1) There is currently in effect a valid Memorandum of Understanding resulting from meeting and conferring between the Agency and another employee organization covering any employees included in the unit described in the Recognition Petition, unless the Recognition Petition is filed less than one-hundred twenty (120) days, but more than ninety (90) days, prior to the expiration date of the Memorandum of Understanding; or
- (2) There has been a valid election under this Resolution pursuant to a petition within the previous twelve-month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the State Conciliation Service.

Costs of conducting elections shall be borne in equal shares by the Agency and by each employee organization appearing on the ballot.

Section 8. Procedure for Decertification of Exclusively Recognized Employee Organization

- (a) A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the later of the following times: (1) during the month of January of any year following the first full year of recognition; or (2) during the thirty (30) day period commencing one hundred eighty (180) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later.
- (b) A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:
 - 1) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
 - 2) The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.

- 3) An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
 - 4) Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.
- (c) An employee organization, may in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent and otherwise conforms to the requirements of Section 4 of this Article.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of Section 4 of this Article II. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization, and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 11 of this Article II.

If the determination of the Employee Relations Officer is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

- (d) The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification, and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 7 of this Article II.

Section 9. Policy and Standards for Determination of 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 Agency and its compatibility with the primary responsibility of the Agency and its employees to effectively and economically accomplish its mandates (missions), and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping 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 Agency 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 Agency.
- d. 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.
- e. 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.

Notwithstanding the foregoing provisions of this Section, management, confidential, and supervisory employees shall not be included in a unit represented by the Exclusively Recognized Employee Organization that represents non-supervisory employees of the Agency; and professional employees shall not be denied the right to be represented in a separate unit from non-professional employees.

The Employee Relations Officer shall, based upon the policy objectives cited above and following full consideration of the aforementioned factors, identify any revisions in the positions affected by the unit determination. Prior to the Employee Relations Officer's adoption of such revisions, notice to and consultation with the concerned employee organizations shall take place.

Section 10. Procedure for Modification of Established Appropriate Units

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Section 8 of this Article II. Such requests shall be submitted in the form of a Recognition Petition, and, in addition to the requirements set forth in Section 4 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 9 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may on his/her own motion propose during the period specified in Section 8 of this Article, that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 9 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 11 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 4 hereof.

Section 11. Appeals

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article II may, within ten (10) days of notice thereof, request the intervention of the California State Conciliation Service pursuant to Government Code Sections 3507.1 and 3507.3, or may in lieu thereof or thereafter, appeal such determination to the Commission for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to Government Code Section 3507.1 or 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Section 4); Challenging Petition (Section 6); or Decertification or Recognition Petition (Section 8)-- or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Section 8) -- has not been filed in compliance with the applicable provisions of this Article, may, within fifteen (15) days of notice of such determination, appeal the determination to the Commission for final decision.

Appeals to the Commission shall be filed in writing with the Chairman of the Commission, and a copy thereof served on the Employee Relations Officer. The Commission shall commence to consider the matter within thirty (30) days of the filing of the appeal. The Commission may, in its discretion, refer the dispute to a third party hearing process. Any decision of the Commission on the use of such procedure, and/or any decision of the Commission determining the substance of the dispute shall be final and binding.

ARTICLE III -- ADMINISTRATION

Section 12. Submission of Current Information by Recognized Employee Organizations

All changes in the information filed with the Agency by a Recognized Employee Organization under items (a) through (h) of its Recognition Petition under Section 4 of this Resolution shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

Section 13. Payroll Deductions on Behalf of Employee Organizations

Upon formal acknowledgement by the Agency of an Exclusively Recognized Employee Organization under this Resolution, only such Exclusively Recognized Employee Organization may be provided payroll deductions of membership dues and insurance premiums for plans sponsored by such organization upon the written