

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
BLITHE MICKELSON
BARRY E. HINKLE
JAMES J. WESSER
ANTONIO RUIZ
MATTHEW J. GAUGER
ASHLEY K. IKEDA *
LINDA BALDWIN JONES
PATRICIA A. DAVIS
ALAN G. CROWLEY
KRISTINA L. HILLMAN **
EMILY P. RICH
BRUCE A. HARLAND
CONCEPCION E. LOZANO-BATISTA
CAREN P. SENCER
ANNE I. YEN
KRISTINA M. ZINNEN
JANNAH V. MANANSALA
MANUEL A. BOIGUES ***
KERRIANNE R. STEELE **
GARY P. PROVENCHER
EZEKIEL D. GARDER ****
MONICA T. GUIZAR
SHARON A. SEIDENSTEIN
LISL R. SOTO

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
TELEPHONE (510) 337-1001
FAX (510) 337-1023
WWW.UNIONCOUNSEL.NET

JOLENE KRAMER
ANTHONY J. TUCCI
MICHAEL D. BURSTEIN
ALEJANDRO DELGADO
MINSU D. LONGJARI *****
CAROLINE N. COHEN
XOCHITL A. LOPEZ
CAITLIN E. GRAY
TIFFANY CRAIN ALTAMIRANO **
RYAN S. KADEVARI
ANDREA E. BRUSS
DAVID W.M. FUJIMOTO
CHRISTINE E. ALVISUREZ
ADAM J. THOMAS

VINCENT A. HARRINGTON, Of Counsel
PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
NINA FENDEL, Of Counsel
TRACY L. MAINGUY, Of Counsel *****
CHRISTIAN L. RAISNER, Of Counsel
THEODORE FRANKLIN, Of Counsel
ROBERT E. SZYKOWNY, Of Counsel

* Admitted in Hawaii
** Also admitted in Nevada
*** Also admitted in Illinois
**** Also admitted in New York and Alaska
***** Also admitted in New York and Michigan

April 26, 2017

U.S. MAIL

Commissioners of the Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street
San Francisco, CA 94105

Mr. Steve Heminger
Executive Director
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street
San Francisco, CA 94105

Re: Voluntary recognition/continued expedient negotiations

Dear Esteemed Commissioners and Mr. Heminger:

We write this letter to request that the Metropolitan Transportation Commission ("MTC") voluntarily recognize the Service Employees International Union, Local 1021 ("SEIU Local 1021") as the exclusive representative of employees employed by the Association of Bay Area Governments ("ABAG") who have accepted offers of employment with the MTC. We further request that the MTC continue to meet and confer in good faith with SEIU Local 1021 regarding the terms and conditions of such employees' new employment.

Composition of unit

SEIU Local 1021 seeks to represent a freestanding bargaining unit comprised solely of the ABAG employees who have accepted employment with the MTC. This is an appropriate unit under the Meyers-Milias-Brown Act ("MMBA"). The ABAG employees who have been hired by the MTC are an identifiable group having a separate community of interest with one another. There is a long, continuous history of the employees being represented in a bargaining unit by SEIU Local 1021. This continuity should not be disrupted. Additionally, although they will be employed by the MTC, they will perform work for ABAG as contractors under the Contract for Services. Their duties and working conditions will remain substantially the same, even though the MTC is now their employer.

LOS ANGELES OFFICE
800 Wilshire Boulevard, Suite 1320
Los Angeles, CA 90017-2607
TEL 213.380.2344 FAX 213.443.5098

SACRAMENTO OFFICE
428 J Street, Suite 520
Sacramento, CA 95814-2341
TEL 916.443.6600 FAX 916.442.0244

HONOLULU OFFICE
Union Plaza
1136 Union Mall, Suite 402
Honolulu, HI 96813-4500
TEL 808.528.8880 FAX 808.528.8881

There is a reasonable basis for creating a unit of former ABAG employees separate from the rest of the MTC employees. (See *Alameda County Assistant Public Defenders Association v. County of Alameda et al.* (1973) 33 Cal.App.3d 825 (the “appropriate unit” standard in Government Code section 3507 parallels the language of the National Labor Relations Act; finding that it would be inappropriate to group assistant public defenders in a bargaining unit with classes of employees having a very different community of interest); see also *Specialty Healthcare*, NLRB Decision 357 NLRB 83 (2011) (so long as a Union’s petitioned-for unit consists of a clearly identifiable group of employees, the NLRB will presume the unit is appropriate; to overcome the presumption of appropriateness, an employer must demonstrate that employees in a larger unit share an “overwhelming” community of interest with those in the petitioned-for unit).)

Accordingly, we ask that the MTC defer to and not oppose SEIU Local 1021’s requested unit.

Recognition of SEIU Local 1021 as the exclusive representative

The MMBA, Government section 3507.1(c), provides what is colloquially known as “card check,” or “voluntary recognition” i.e., a requirement that a public agency grant exclusive or majority representation to an employee organization “based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation...” (Government Code section 3507.1(c).) The purpose of this provision is to establish an expedited method for certifying an exclusive or majority representative for purposes of meeting and conferring over wages, hours and terms and conditions of employment. This procedure expedites the selection of an exclusive representative by obviating the need for an election in most circumstances. Furthering the purpose of expediting recognition procedures, the Public Employment Relations Board (“PERB”) has held that the employer may not refuse to recognize an employee organization that has shown majority support based on an asserted reasonable doubt that the employee organization has majority support. (*Antelope Valley Health Care District* (2006) PERB Decision No. 1816-M, slip op. pp. 9-10, citing Government Code section 3507 and 3507.1(c)(the MMBA enunciates “a clear requirement that the employer must grant recognition upon a showing of majority support”.)

SEIU Local 1021 will promptly submit to a neutral third party the signed cards showing that a majority of such employees desire such representation. (See MMBA, Government Code section 3507.1(c).) We suggest that David Campos, former City & County of San Francisco Board of Supervisors Member, former MTC Commissioner, now Deputy County Executive of the County of Santa Clara, serve as the neutral third party to conduct the count. We ask that you provide him a complete list of all former ABAG employees who have been hired by the MTC, so that he can cross-check the list and the signed cards. Once SEIU Local 1021 has demonstrated majority status, the MTC “shall grant exclusive or majority recognition” to SEIU Local 1021. This shall occur even before the former ABAG employees formally commence working for the MTC given that the definition of “public employee” under the MMBA is very broad, encompassing “any person employed by any public agency.” (Government Code section 3501(d), emphasis supplied.) Here, the MTC has already made offers of employment to the ABAG employees, which those employees have accepted. The individuals are therefore employees of the MTC under the MMBA for recognition and bargaining purposes.

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Timing of negotiations

During the transition period, the MTC has a duty to meet and confer in good faith with SEIU Local 1021 (as the existing exclusive representative of the ABAG unit) regarding the terms and conditions of employment being offered to the ABAG employees who will work for the MTC. Once the card-check process described above is complete, the MTC will continue to have a duty to promptly meet and confer in good faith with SEIU Local 1021 (as the exclusive representative of the newly-created unit in the MTC). We expect that the MTC will comply with its bargaining obligation both now and in the future.

Thank you very much in advance for your anticipated cooperation.

Sincerely,



Kerianne R. Steele

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