

To: DPPA Board
From: The 028 Organizing Research Committee
Date: September 21, 2010
Re: Final Committee Recommendation

This Committee was appointed by the DPPA Board and charged with the task of objectively researching organizing options outlined in the Show of Interest cards recently submitted by Unit 028 employees. With formal recognition, a primary goal is to provide protection for Unit 028 employees against County-initiated unilateral changes of pay and benefits by attaining the legal rights and protections afforded a formally recognized employee organization. Unit 028 is one of only three Sacramento County employee representation units that do not have formal recognition status. For the purpose of this discussion, the terms “employee organization,” “employee association” and “union” are interchangeable under the County rules and California law. The key is not what an organization has named itself but whether or not that organization goes through a petition and election process and meets the standards to become a “Recognized Employee Organization (REO).”

OPTIONS

Employee organization options reviewed by the committee were:

1. Do nothing and remain unrepresented, with DPPA remaining as an “unrecognized Employee Association” with no bargaining rights.
2. Have DPPA become the Unit 028 Recognized Employee Organization (REO) for the purpose of representing Unit 028 employees
3. Join and have the Sacramento County Managers Association (SCMA) become the Unit 028 Recognized Employee Organization (REO) for the purpose of representing Unit 028 employees.
4. Join and have the UPEC Local 792 become the Recognized Employee Organization (REO) for the purpose of representing Unit 028 employees. [NOTE: UPEC Local 792 is not affiliated with UPE.]

It was quickly decided to dispense with Option 1: “do nothing”. There has been sufficient interest demonstrated among Unit 028 employees to conclude that we collectively want to pursue the legal protection of formal recognition status.

TYPES OF SERVICES CONTEMPLATED

Any Recognized Employee Organization for Unit 028 would have the responsibility to deliver labor relations service for Unit 28 employees, including such services as:

- Recruitment of and communication to members
- Administration of dues including member tracking and book keeping (tax filing, etc.)
- Grievance representation
- Discipline representation from counseling to termination

- Disciplinary interview representation
- Arbitration hearings
- Negotiations issues development
- Contract negotiations
- Impasse procedures
- Classification and reclassification issues
- Labor/Management Committees and interaction with management
- Agency Shop (Fair Share Fee) administration if sought and attained
- Political action program
- Employee rights training
- Union leadership training
- Work site development including a stewards structure
- Litigation on individual and Unit labor issues
- Unfair Labor Practice representation in front of PERB (Public Employment Relations Board)

The Committee looked at the cost and methods of delivering such services and the quality of such services including the experience, availability and capability of staff to perform these services to “hit the ground running.”

It should be noted that there is a legal obligation under the State bargaining statute (MMBA) to provide a “Duty of Fair Representation” to all employees in the bargaining unit once formal recognition has been attained. Such DFR should not be taken lightly as the consequences for breaching that duty can be severe. With rights (Recognized Employee Organization status) comes responsibility (the Duty of Fair Representation).

As an additional note, it is worth mentioning that a Fair Share Fee provision otherwise known as “Agency Shop” can be implemented in order to collect service fees from non members of Unit 28 in order to ensure the REO has the financial resources to comply with its obligations under the Duty of Fair Representation. This can be a very important tool as an Agency Shop environment typically increases membership which in turn strengthens the employee organization for dealing with the employer.

REVIEW

Following is a brief summary of factors reviewed by the Committee.

Factors	DPPA to be the REO	SCMA to be the REO	UPEC 792 to be the REO
Cost	Dues increase would be needed. Initially estimated at some amount greater than the \$10 per pay period charged by SCMA (based on the fact that DPPA would be providing identical services but sharing the cost across roughly one-third of SCMA's membership count).	\$10 per pay period (\$21.67 monthly)	\$37.50 monthly
Professional staff availability	None. Would need to hire legal representation. Cost is undetermined and depends on contracted services.	Retained law firm. Services billed at hourly rate.	Labor and legal staff on hand. No limit on services provided.

Factors	DPPA to be the REO	SCMA to be the REO	UPEC 792 to be the REO
Internal staff experience	Minimal. Would need to retain professional assistance and self-train sufficiently to quickly attain a qualified competence level, especially in light of the legal obligation under the State bargaining statute (MMBA) to provide a "Duty of Fair Representation."	Somewhat experienced. Self-taught on labor relations and contract negotiation issues. Additional assistance provided by consultations with retained law firm.	Fully experienced staff and retained labor law firm.
Location of organization	Sacramento	Sacramento	Multiple Regional Offices, including Sacramento

Factors	DPPA to be the REO	SCMA to be the REO	UPEC 792 to be the REO
Possible conflicts	No conflicts identified	1) Represents two other units: Managers and Attorney-Civil 2) Since virtually all disciplinary, classification, and/or grievance issues are typically directed toward management actions, it is unclear how well the SCMA Board could adequately represent both management and non-management employees. 3) County Code Labor Relations chapter 2.79.080 explicitly states that management cannot represent non-management or non-confidential employees. A legal opinion would be required for clarification.	No conflicts identified. Does not represent any Sacramento County employee representation unit.
Bargaining autonomy for Unit 028	Fully autonomous Full membership votes on significant decisions (contracts, concessions, etc.)	SCMA bylaws, unit autonomy is unclear	Fully autonomous Full membership votes on significant decisions (contracts, concessions, etc.)

Factors	DPPA to be the REO	SCMA to be the REO	UPEC 792 to be the REO
Organizational structure	Board of Directors	Board of Directors	Board of Directors, with Unit Steward Structure
Commitment to represent as an REO	Would need to evolve DPPA to new role	Unclear due to possible conflicts with SCMA units	Clearly articulated commitment to Unit 028

RECOMMENDATION

The 028 Organizing Research Committee recommends Unit 028 employees transition from DPPA informal recognition with the County to attaining formal recognition status with UPEC 792 as the Recognized Employee Organization.

JUSTIFICATION

1. The SCMA option is not a viable option.
 - o The SCMA Board is unable to give 028 a firm answer on whether or not they will represent 028
 - o It is unclear what effect County Code Labor Relations Chapter 2.79.080, sections d, e, and f have on SCMA’s ability to represent 028.
 - o November is the earliest SCMA will be able to advise 028 on their decision regarding representation. A legal opinion will be required on 2.79.080 verbiage, thus the possibility of missing our December 20, 2010, deadline for filing our petition.

2. The DPPA-as-REO option entails considerable “unknowns,” thus making committee members uncomfortable with recommending this as a viable option.
 - o The DPPA-as-REO option will entail, during labor negotiations, an estimated 20-40 hours per month of commitment from whatever DPPA Board members are involved in the negotiations and associated research, training, outreach, and organizational duties.
 - o Ongoing time commitments from DPPA Board members after a contract has been negotiated are unclear. Additionally, there is a legal obligation under the State bargaining statute (MMBA) to provide a “Duty of Fair Representation” (DFR) to all employees in the bargaining unit once formal recognition has been attained. That duty cannot be taken lightly since the consequence for breaching that duty can be severe.
 - o The DPPA Board, while it has invested a considerable amount of effort in the past, does not currently have the knowledge or the expertise to perform the duties of an REO without substantial and immediate ‘boot strapping’.

- Given the “unknowns,” DPPA Board members are unable to guarantee the level of commitment that would be required if DPPA is chosen as the REO. The DPPA Board reported to the Committee that it would require additional involvement to help them with the increased workload if DPPA is selected as the 028 REO.
 - The DPPA Board consists of nine members drawn from a total pool of 280 members of the 028 representation unit. During the past eight years, there has never been a contested election for a DPPA Board officer. Lack of participation and interest from membership is well known. While that unfortunate reality may have been acceptable in the past, there is entirely too much at stake to allow membership’s apathy to shape the level and quality of services provided by DPPA to 028 members.
 - It is unclear what the costs to 028 members would be for the DPPA-as-REO option. SCMA is our best gauge for approximating those costs. 028 is roughly one third the size of the employee pool from which SCMA draws its members. There is no significant break in per-REO-service costs for REOs with fewer members. Therefore, all costs for labor relations services will by definition be spread across a much smaller pool of members than that of SCMA. As with the time commitment issue above, it is likely that at some point either 1) dues would have to go up substantially to cover the cost of normal or extraordinary, unexpected services; or 2) conversely, services would have to be curtailed to stay within a pre-defined dues amount. Since contract negotiation services are essential, any 028 REO dues structure would (at a minimum) need to pay for those services. Currently, SCMA’s dues-paying members total more than the entire 028 membership count. They charge \$21.67 per month and explicitly provide little more than labor negotiation services. It is likely that DPPA would need to charge considerably more than \$21.67 per month to cover that same service level.
 - Since all DPPA members are liable for all expenses incurred by the REO, it is unclear how unexpected or extraordinary expenses like protracted contract negotiations or litigation might translate into additional costs to individual members.
3. The UPEC 792 option provides all of the typical REO services for one, well-know and low cost dues amount of \$37.50 per month. All services, attorney fees, unexpected events and extraordinary costs are absorbed by UPEC 792 at no additional cost to members.
- UPEC does not currently represent any units within Sacramento County so there is no ‘bad blood’ either between UPEC and County employees, or between UPEC and County administration.
 - UPEC represents numerous law enforcement, courts, and other public employee groups throughout Northern California.
 - UPEC has the expertise, the time, and the resources to immediately perform the job of negotiating. It does not need time or resources to self-train or bootstrap internal staff.
 - UPEC has attorneys on retainer for quick assistance in labor relations legal matters, at no additional cost to 028 members.

- As with any other REO, UPEC could not negotiate anything that 028 did not ask it to. 028 is the final decider on contract ratification and major-issue decisions.
- At \$37.50 per month for dues, this is by far the lowest-cost alternative from among established unions that have been researched (primarily Local 39 and UPE).
- Neither Job titles nor pay rates determine dues structure (as is the case with both UPE and Local 39). UPEC 792's \$37.50 per month is a flat rate.

PROCESS

Establish a DPPA "Organizing Committee" to work with UPEC staff to attain formal recognition.

Construct a new "Show of Interest" specific to UPEC and collect the new cards from Unit 028 employees to turn in to the County. Our goal should be to turn in cards for at least 50% of the unit. It is UPEC's observation that the December "window" for turning in show of interest cards, as described, is for "new units" and since 028 is a long-established unit it may be that the County will accept the show of interest sooner than December. In the interest of stopping possible unilateral changes to our pay and benefits sooner rather than later, the Committee recommends we file the show of interest for REO status as soon as possible. There is no harm in filing earlier than December and the County's response may provide valuable information.

Maintain the DPPA Board as an organizing resource of capable volunteers to assist UPEC with attaining Recognized Employee Organization status. DPPA should decide what to do with its assets and treasury and amend its bylaws prior to the election (i.e., disburse to a charitable organization, to members, place on hold, in trust, etc.).

At the point in time that the County formally recognizes UPEC, payroll deduction will switch to UPEC and dues revenue to DPPA will cease. UPEC will assume all representation activities under the model articulated in the accompanying "UPEC Staff Report" below.

**UPEC STAFF REPORT SUBMITTED TO THE COMMITTEE AND INCORPORATED
HEREIN**

UPEC 792 has an established track record of Union representation for City and County bargaining units and is very interested in representing Unit 28 employees.

Upon attaining recognition, DPPA would decide its future (go inactive, become a social organization, disband, etc.) while UPEC would be certified as the formally recognized employee organization pursuant to Sacramento County ordinance and State law. UPEC would have the right and obligation to represent Unit 28 employees pursuant to the Duty of Fair Representation. The DPPA would be relieved of that responsibility as an organization, however, as individuals, it is essential that UPEC incorporate DPPA history and Board Member experience into the new representation model. UPEC requests current DPPA Board members and activists become part of the UPEC structure by volunteering for the bargaining team, steward structure and any committees that Unit 028 deems appropriate. For example, many UPEC units have a “Chief Steward” to assist in coordinating representation activities. Any steward or site representative structure would be developed per Unit 028 input and suggestion. Of course, new volunteers are also welcome!

UPEC has the depth of staff, resources, knowledge and experience to expertly represent Unit 28 employees. Another advantage to UPEC representation is that UPEC’s parent organization, the Laborer’s International Union of North America (LIUNA) has a Regional Office and staff located in Sacramento. Equally significant, LIUNA’s national headquarters for its Public Employee Department is likewise located in Sacramento. The resources of these offices are available to Unit 028

We pride ourselves on our democratic structure that provides a framework for input and voting on all policy decisions whether a Union budget issue considered by our Executive Board or the guarantee that only members make bargaining strategy and ratification decisions at each bargaining unit level. That means Unit 028 members decide what to bargain for, how to respond to County proposals, and whether to ratify a proposed contract.

Sacramento County is an important geographic area for Union representation that UPEC has been looking at as our Union has expanded from Shasta County to include 10 additional Counties in the last 10 years, from the Oregon and Nevada borders down the I-5 corridor all the way through the Bay Area to the Central Coast. As mentioned, Sacramento County is where our International Union’s Regional Office is based. Our National Public Employee Department is headquartered there as well and is also the main office of our primary labor law firm of Goyette and Associates. We simply have not yet had an organizing opportunity until contacted by the DPPA and we are very interested in establishing a Sacramento presence.

Were Unit 28 to become represented by UPEC, we would establish a Sacramento County Region in our Union bylaws and offer the DPPA/Unit 28 a seat on our UPEC Executive Board.

Here are some initial points to outline our thoughts about what we can do to assist the DPPA and Unit 28 in the immediate future:

- Assist the DPPA with a certification campaign by providing staff to attend site meetings as needed for signature gathering and then campaigning for a successful election. Prepare correspondence, brochures and other materials in support of a campaign in order to educate Unit 028 members to the benefit of UPRC representation. These activities to be provided at no charge.
- During the campaign and prior to certification, UPEC staff to assist and represent the DPPA upon request in any meetings and/or discussions with the County pursuant to DPPA's status of informal recognition. Such representation to be provided at no charge.
- Upon gaining certification, UPEC to immediately perform all Union labor relation services for Unit 028 employees including an initial organizing campaign for voluntary membership with consideration for an Agency Shop campaign in the event voluntary membership is insufficient to effectively support the goals of the membership.
- UPEC will handle day-to-day representation activities for individual employee issues such as performance evaluations, counseling, disciplinary interviews, grievances and disciplinary appeals.
- UPEC will assist in developing short and long term goals for Unit 028 employees and craft a strategy to attain those goals, including forming an employee bargaining team, developing bargaining positions, providing a staff lead negotiator for all meetings and guiding the team through the bargaining process to its conclusion.
- UPEC will provide Employee Rights training, Steward Training and Bargaining Team Training in order to increase the education level of Unit employees on these important topics.
- UPEC will solicit interest to establish a viable Steward's Council, ideally with a steward appointed at each selected work site.
- UPEC will be responsible for establishing and improving communication with Unit 028 employees in order to develop a more united and cohesive labor relations strategy.
- Services to be provided at Local 792's regular monthly dues amount of 37.50 per member per month.

CLOSING

Thank you for allowing us the opportunity to serve Unit 028.

Signatures of Committee Members Approving This Recommendation

Nancy Arkelian

Rich Reed

Elliott Quave

Kelly Newell

Paul Vaca

Susan Lew

Judy Adolph

Teryl Parnell

Steve Souza (non-voting member)