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Brian Hopper, Esq.
Assistant District Counsel
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Via email & mail

*Re: Employees Association AFSCME Local 101 & Santa Clara Valley Water District
(Unit Modification Petition)*

Dear Mr. Hopper:

As you know, this office represents the Employees Association, AFSCME Local 101 ("AFSCME"), in the above-captioned matter.

AFSCME submits this letter in response to the Unit Modification Petition ("the Petition") filed by a group of employees calling themselves the Professional and Scientific Employee Organization ("PSEO"). As you know, AFSCME does not disagree with the proposition that the professional employees within the AFSCME unit have the right, if that right is properly invoked, to decide to be represented in a unit consisting of professional employees only. We submit, however, that the Petition in this matter is not the proper vehicle for invoking that right.

As we noted at the mediation session conducted on March 4, 2011, AFSCME believes the Petition is inappropriate because it petitions to create a new unit that is not an appropriate unit. That is, PSEO's petition seeks to move from the incumbent, AFSCME unit some, but only some, of the District's professional employees. If a unit of professional employees is going to be created out of the incumbent, AFSCME unit, to be appropriate the professional unit should include all of the professional employees currently represented by AFSCME. The Petition does not seek to create such a unit.

In any event, again as noted at the March 4 mediation, the Petition seeks to create a very small professional unit of just a handful of professional classifications that share no distinct

community of interest separate and apart from other professional employees currently included in the AFSCME unit. Thus, the Petition seeks some of the AFSCME-represented professionals in certain District departments, or "units," but not all of the AFSCME-represented professionals in those units. The "hodge-podge" nature of the professional unit sought by the Petition would leave some professionals working under one set of supervision and management in the AFSCME unit while moving other professionals working under the same set of supervision and management into the new unit. The proposed unit for this separate and independent reason is not an appropriate unit.

Recognizing these problems with the unit sought in its Petition, PSEO on March 4 presented a letter to the District seeking to expand the petitioned-for professional unit from a unit of just 33 employees to a unit described as "the broadest professional unit to include the District's entire list of professional and scientific employees housed within" AFSCME. PSEO is thus now asking that its Petition be amended to cover a unit of some 200 employees.

While AFSCME agrees that, if a professional unit is to be created out of the existing AFSCME unit, it should include *all* professional employees, AFSCME does not agree that the Petition is the appropriate vehicle to create this unit.

First, the Petition here was filed during the appropriate window period, which is the month of November. The District's rules do not authorize, and it is not appropriate for, PSEO to amend its petition over three months after the close of the window period. This is especially so where, as here, the petitioner seeks to expand the scope of the unit by some 600%.

Second, the showing of interest PSEO must present to support its unit modification petition was to be submitted with the petition, that is, back in November of last year. Even if PSEO submitted a showing of interest signed by each of the 33 employees in the petitioned-for unit, that showing of interest would fall far short of the majority showing necessary to support a petition for a unit of some 200 employees. Thus, PSEO does not have a showing of interest to support a petition expanded to cover some 200 employees.

Finally, regardless of the District's position on the points raised above, there is a fundamental flaw in the Petition that necessitates its dismissal. Under the District's rules, an employee organization with a proper showing of interest may petition to modify an existing bargaining unit to create a new unit out of the existing unit, a new unit to be represented by the petitioning employee organization. But here PSEO does not seek by the Petition to represent employees in a newly created unit. Rather, PSEO seeks to use the Petition to create a professional unit that would continue to be represented by AFSCME. Thus, PSEO is attempting to use the District's unit-modification procedures to compel the AFSCME membership to represent a particular unit, a unit that the AFSCME membership itself is not seeking, a unit that the AFSCME membership itself does not, at this time, wish to carve out of its existing unit. PSEO, in other words, is seeking to use the Petition to control how AFSCME goes about representing its members. This is purely an internal union matter, and not one to be dictated through the District's unit-modification procedure. If the AFSCME membership at some point

determines that it wishes to move professional employees from the existing unit to a newly created professional unit, AFSCME will at that point invoke the District's unit-modification procedures. But until and unless AFSCME membership makes that decision, PSEO cannot use the District's unit-modification procedures to force upon the AFSCME membership a bargaining unit it does not seek to represent.

For all of these reasons, the Petition must be dismissed.

Very truly yours,



Andrew H. Baker

AHB/lh

cc: Felix Huerta, AFSCME Council 57
David Clisham, Esq.