RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No_X___)
Appeal Hearing of County Administrative Officer’s decision to deny Unit Modification request of the Deputy Sheriffs’ Association to move the Sheriffs’ Dispatchers and the Animal Control Officers from the SEIU bargaining unit to the Deputy Sheriffs’ Association bargaining unit.

On August 13, 2001, the Deputy Probation Officers and Sheriffs’ Dispatchers petitioned to modify the SEIU bargaining unit by removing themselves and transferring to the Deputy Sheriffs’ Association. Likewise, on August 13, 2001, the Chief Deputy Probation Officers petitioned to remove themselves from MCMCO and requested a transfer to the Sheriffs’ Management Association. Another Petition was received on August 27, 2001 from the Animal Control Officer requesting that their bargaining unit (SEIU) be modified by allowing them to move from SEIU to the Deputy Sheriffs’ Association bargaining unit. These individuals were proceeding in accordance with section 10.7 of the Mariposa County Employer-Employee Relations Policy, which outlines the procedure for modifying an established unit. After meeting with representatives of the affected bargaining units, the County Administrative Officer made a determination as to whether the proposed units were the appropriate units for these groups. A letter was sent to the affected units informing them that a determination was made and that determination was that it was appropriate to move the Deputy Probation Officers to the Deputy Sheriffs’ Association bargaining unit and also appropriate to move the Chief Deputy Probation Officers to the Sheriffs’ Management Association unit. However, it was determined that the Animal Control Officers and the Sheriffs’ Dispatchers should remain in SEIU.

These two groups (Animal Control Officers and Sheriffs’ Dispatchers) with the support of the Deputy Sheriffs’ Association have appealed this decision to your Board, a copy of which is included in this package. A response has been filed by the County Administrative Officer, dated December 20, 2001, copy attached. Also attached is a copy of Section 10.1 of the Mariposa County Employer-Employee Relations Policy, which contains the criteria to be used to determine appropriate bargaining unit designation.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
None on this action

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Make a decision relative to the appeal.

COSTS: ( ) Not Applicable
A. Budgeted current FY
B. Total anticipated costs
C. Required additional funding
D. Internal transfers

SOURCE: (45ths Vote Required
A. Unanticipated revenues
B. Reserve for contingencies
C. Source description
Balance in Reserve for Contingencies, if approved: $____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

CLERK’S USE ONLY:
Res. No.: ___
Vote - Ayes: ___
Absent: ___
Denied: ___
Minute Order Attached: ( ) Yes
( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date:
ATTEST:
MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By:
Deputy

C.O.A. Initials: ___

COUNTY ADMINISTRATIVE OFFICER’S RECOMMENDATION:
This item on agenda as:
Recommended
Not Recommended
For Policy Determination
Submitted with Comment
Returned for Further Action
Comment:

C.A.O. Initials: ___
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222
ROBERT C. STEWART, CHAIRMAN
PATTI A. REILLY, VICE-CHAIRMAN
DOUG BALMAIN
GARRY R. PARKER
BOB PICKARD

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: GREG ITURRIA, County Administrative Officer
FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Appeal Hearing of CAO Decision to Deny Unit Modification for Dispatchers and Animal Control Officers
Resolution No. 02-14

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on January 8, 2002

ACTION AND VOTE:

2:07 p.m. Greg Iturria, County Administrative Officer;
Appeal Hearing of County Administrative Officer’s Decision to Deny Unit Modification Request of the Deputy Sheriffs’ Association to Move the Sheriffs’ Dispatchers and Animal Control Officers from the SEIU Bargaining Unit to the Deputy Sheriffs’ Association Bargaining Unit

BOARD ACTION: Greg Iturria presented the staff report – he provided background information, reviewed the written materials in the package, and described the criteria for consideration of the appeal. He advised that Attorney Rick Bolanos was present to assist with providing any interpretation questions of the law, or guidance that may be desired, due to the technical nature of the criteria to be considered by the Board in this hearing.

Appellant’s presentation:
Fred Paige, Sheriff’s Deputy and President of the Deputy Sheriffs’ Association (DSA), stated he believes the Board has all of the information in its package that is pertinent to this hearing. He referred to the County Administrative Officer’s last memorandum relative to SB 402 and Government Code Section 3508, and he stated that the DSA is willing to accept non-peace officers into its bargaining unit and they realize that the non-peace officers do not have the same bargaining rights. He stated there are numerous other counties and cities where the DSA has non-peace officers included in their bargaining unit. He commented on the similarities between the deputies and the dispatchers and the animal control officers with the types of work, schedules, work with the public and training that is covered by the Peace Officers Standards and Training Act (POST). He reiterated that the DSA is willing to accept them into their bargaining unit.

A.J. Perez, Sheriff’s Dispatcher, stated he does not feel that they are setting any precedence with this request. They have supplied information of other agencies and counties that have peace officers and
the six full-time dispatchers have POST Certificates, they work the same hours as deputies and have contact with the public. He referred to the County Administrative Officer’s memorandum of December 20th and reasons for denying the unit modification request and the reference to Government Code Section 3508 and SB 402; and stated he feels that Probation will also elaborate on this. He advised that he feels that Probation will state that it was not their intention that the dispatchers and animal control officers be excluded from the DSA. He stated DSA is willing to accept them into membership, and SEIU is willing to let them leave their Union for representation. He referred to the Board’s earlier consideration of hearing this appeal and a question that was raised as to whether there is a mandate that would not allow civilians to be let into DSA; and the County Administrative Officer responded that there was not. He stated he feels that if there are other organizations, such as Merced County and City, who we use for labor negotiation comparisons that allow their civilian staff to join with their DSA union, he is hoping the Board will consider the same thing for Mariposa County employees.

Mark Millon, Deputy Probation Officer, commented on the letter from the County Administrative Officer where he references the statutory right expressly cited by the County Probation Officers in support of their unit modification petition. He stated he is not sure what that is based on. He advised that he has copies of their petition available if the Board has not seen that information. He stated they included in their petition their right to be represented by a unit, which specifically addresses the needs of peace officers, and there was never any intent to be opposed to the dispatchers or animal control officers becoming a part of the DSA.

Janet Breman, Sheriff’s Dispatcher, thanked all units within the Sheriff’s Department and the Probation Department and both Unions for their support of their request to change bargaining units. She commented on the letter that was sent with their petition and references to the job duty similarities, and of their contact with the public. She also referenced other communities and counties where the dispatchers are included with the deputy sheriffs’ bargaining unit. She stated she feels the change would be beneficial to both the Department as a whole and to the community – this would bring the factions of the Department together. She noted that this is also the will of the people in the group. She asked what would be negative about the change if there is nothing legally preventing it.

Fred Paige advised that the animal control officers were sent out on a call and are unable to be present at the hearing.

Pelk Richards, Sheriff, commented on the similarities of their uniforms. He referred to the issues stated for denying the appeal in the County Administrative Officer’s decision, and stated he feels we bypass, under County policy, the term “broadest, similarity, and generally.” He noted the probation officers invoked their rights under Government Code Section 3508, and that did not change anything. He commented on Government Code Section 3508, and stated he did not find anything that prohibits this change. He noted he opposed SB 402; however, the legislation passed, and it is clear in the language, by definition, that this is exclusively for firefighters and law enforcement. This is also backed up in the Code of Civil Procedure 199.3(e) which defines law enforcement, so dispatchers and the animal control officers do not receive the distinction and other rights afforded to law enforcement personnel. He referenced Penal Code Sections starting with 830.1 that also make this distinction clear, along with SB 402. He cited Fair Labor Standards Act Section 622, which states that law enforcement employees who qualify in the language are designated as peace officers, and he referenced 207(k) exemptions as civilian employees and dispatchers. So he does not think there is an issue in the denial of the request. He stated that if the Board is concerned that the employees can come into the DSA unit and automatically become peace officers with retirement, that could only occur with a change in the legislation and it would not make any difference which union the employees were assigned to. He stated he feels the safeguards are already in place and it is not the intent of the legislature to make dispatchers and animal control officers peace officers.

Questions by the Board of the appellants:

Fred Paige responded to questions from the Board relative to his input concerning the peace officers waiving their right to have a bargaining unit that is exclusively comprised of peace officer membership. He advised that as an Association the waiver of this right was voted on and approved.

Presentation on behalf of the County:

Attorney Rick Bolanos stated he was present to provide clarification that may be requested relative the County Administrative Officer’s decision on this matter, and to answer questions. He responded to the input provided by the employees on behalf of the appeal, and he stated it is administration’s view that the
request for unit modification is being brought forward with appropriate and legitimate reason. It is recognized and appreciated that the employees seeking the modification are doing so simply to pursue what they believe to be the most effective means of representation. They have the right to pursue the appeal, and he knows it was brought in good faith, and he knows that the Board will fully consider and evaluate all of the issues that have been submitted. He clarified the following in terms of the County Administrative Officer’s position for the Board’s review and deliberation, as noted in the response dated December 20th - it is important to understand that under the law in California, peace officers are afforded special status for labor relations and negotiations. He noted that is not being disputed today. It has been acknowledged by individuals presenting on behalf of the appeal that there are two areas where the law separates peace officers for purposes of labor relations and bargaining. The first deals with Government Code Section 3508, and it does establish the right of peace officers to be members of what is considered exclusively a peace officer unit. That is a unique provision of the California Government Code, the Meyers-Millas-Brown Act. It has been correctly noted that is a right the officers hold and the officers could elect to waive that right. But it is important to recognize that, for purposes of defining the unit, peace officers are viewed uniquely and the officers have the right to assert that right, and they would have the right to assert that right in the future – even should they change their mind. Should they assert that right, as he reads the law, the County would be obligated as a matter of law to modify the unit. He feels that is a consideration the Board should keep in mind. He feels it is correctly noted that the petition that was submitted by the Probation Officers doesn’t specifically state that they are requiring that the unit consist solely of peace officers. But they read the petition as asserting the right, as a peace officer, to be represented by an organization that represents exclusively peace officers, as allowed by Government Code Section 3508, which is the reason this is referred to in the decision. He noted the recent change in the law as a result of SB 402, which went into effect January, 2001, entitles peace officers to submit bargaining impasse issues on economic issues to binding arbitration. This is a very significant change in the law, because prior to January 1, 2001, those final decisions were reserved to the Board. SB 402 has been hotly contested and has been challenged in the court, and there appears to be a split by the lower courts as to whether this is constitutional. He does not expect any final resolution of the constitutionality issue for some time. However, in the interim, it must be enforced and peace officers have the right to bring matters to arbitration. Relative to the issue cited in the December 20th decision that by modifying the unit as requested, the dispatchers and animal control officers are not considered peace officers and are not subject to SB 402. The petition has requested that those classifications be made part of the bargaining unit, and he feels it is important to note that there is a distinction between saying part of the bargaining unit and part of the union. There is a distinction in that, when you are part of a unit, which is what the petition is requesting, you have a duty, under State law to meet and confer with that entire unit and the exclusive representative of that unit. While it has been represented that DSA would be prepared to not insist on issues going to arbitration for dispatchers and animal control officers; and accepting that as the case, it would still place the County in a position, for purposes of bargaining, to treat classifications in the same unit differently. It would have some issues come to the Board for resolution and some issues go to an arbitrator for resolution. He stated there can only be one memorandum of understanding for each bargaining unit, and he would anticipate complications and some significant changes on how collective bargaining is approached as a result of having some employees covered by SB402 in one unit and some employees not covered. He stated it is the case that over time, non-sworn officers have been part of an association representing sworn officers in other agencies. But he feels it is important to remember that those configurations of bargaining units took place before SB 402/binding arbitration, was imposed on counties. He feels that over time there may be some change in those units as a result of SB 402. To summarize, he stated he feels the issue of what is the appropriate unit can be debated and there are good faith arguments on both sides. He stated the similarity of work presented in the petition is acknowledged, and he feels that ultimately the reason for denial of the appeal is one the Board should be encouraged to consider – that is the impact the State law issues, in terms of how the State law treats peace officers, could have on labor relations in the County in the future. The overriding objective is to have and to provide for a mechanism for stable and harmonious labor relations. It is the assessment of the Administration that the unit modification, as requested, may not be consistent with that goal. He stated he is available to answer any questions.

Attorney Bolanos responded to questions from the Board relative to the Meyers-Millas-Brown Act and the meet and confer issue and whether that allows for the County to establish a two-tier-type of
memorandum of understanding with a bargaining unit to differentiate between sworn deputies that would be covered under SB 402 and non-sworn employees of the Sheriff’s Department. He advised that there is nothing that prohibits that; however, the law contemplates and the standard has always been to have one memorandum of understanding for each bargaining unit. There could be sub-divisions within the memorandum of understanding that apply to different groups of employees. He also noted that the law is so new that issues have not been litigated, and it is not clear as to what happens when you go to impasse should you have peace officers and non-peace officers in one bargaining unit. It has also not been resolved as to the affect of having sworn and non-sworn officers in one unit and whether the non-peace officers have the right to go to binding arbitration. He also responded to a question from the Board as to whether the current statutes distinguishes between probation officers and peace officers in general. The current status of the law is that county probation officers are considered peace officers; and therefore, they are on the same footing for purposes of both of these issues that are being discussed – Government Code 3508/being in one unit exclusive of non peace officers and SB 402/binding arbitration.

Mark Mellon responded to a question from the Board as to whether the probation officers have waived their right to an exclusive peace officer unit. He advised that this change is so new for them, that they have not had an opportunity to formally waive their rights, but he does not see it being a problem.

Attorney Bolanos responded to a question from the Board as to whether it would be important for the probation officers to formally waive their right to an exclusive peace officer unit, and he advised that they could assert their right to an exclusive peace officer unit in the future and the County would be mandated to see to that request.

Sheriff Richards asked to respond to input that was provided. Supervisor Parker questioned whether it is appropriate for an elected official to represent the employees in this type of matter. Sheriff Richards advised that he is advocating for the right versus for the employees, and he feels there is a difference.

Sheriff Richards noted that in the Memorandum of Understanding for the SEIU bargaining unit, there is a practice of showing different benefits for different classifications. He further noted that until just recently and since January 1, 2001, there were peace officers in the SEIU bargaining group and nothing has changed – they could have invoked their rights pursuant to Government Code Section 3508 and SB 402 while being under SEIU and nothing has changed.

Mark Mellon stated he supports the input provided by the Sheriff and he feels there is still a peace officer position in the Welfare Department in the SEIU bargaining unit.

Supervisor Pickard asked about the issues relative to tiering within a bargaining unit and what status it would give employees that are not eligible for SB 402. Attorney Bolanos responded after the following input.

Fred Paige responded to a question from the Board relative to the pros and cons of their request, and where this fits with SB 402. Fred noted that if an impasse is reached in labor negotiations, it would not affect the non-sworn employees; and that until the legislation is litigated, it will not be known where this fits with SB 402.

Attorney Bolanos commented that the law has not been clarified, but provided a practical impact as a result of SB 402 – when you go into negotiations, you evaluate all of your economic items and you cost those items out and you develop proposals based on the costs of the package to the County, and the bargaining unit does the same thing. The idea that part of the group could go to an arbitrator and part of the group to the Board is going to call on some very unusual techniques in bargaining and could result in different results for each group. As a practical matter, it is going to have an impact. The assessment at the administrative level is that it is better and cleaner to keep the units separate in light of the way the law has defined the impasse process for peace officers. He responded to a question from the Board relative to the difference between the unit and the union, and he advised that the unit is a group of classifications that have been formed as a bargaining group, and any unit can decide which union or organization or association they wish to be their exclusive representative. You can have situations where you have an association represent different units – some sworn and some non-sworn. The significance of the difference is that they are different units, so the impasse process is different.

Janet Breman responded to questions from the Board relative to the pros and cons of their request and what they will gain by the unit modification. She noted they have been trying to change bargaining units for several years. With the requested change, they are hoping to gain better representation. She stated that
they do not feel that SEIU represents their needs for their classification in a satisfactory manner, and they feel they can get better satisfaction with a union that understands law enforcement.

Luciano Beltran, Operating Engineers, advised that they represent DSA, and he commented on Attorney Bolanos’ input relative to possible future changes. He noted that the law could change at any time for different units. He stated he feels the law is specific now and states the only employees represented by SB 402 is peace officers. He stated he feels that anyone could appeal anything. He does not feel that a lot could be done if decisions are made on a “what if” basis all of the time. He urged the Board to look at what is allowed currently, because any law can change tomorrow.

Lisa Edelheit, SEIU 535, stated they have no opposition to this modification request. Relative to the pros and cons, she stated they have worked very hard for everyone, including the dispatchers. She stated she feels the Board will have the same decisions for these employees, and that does not have anything to do with representation. She understands the job duty similarities. She also noted that not one dispatcher has chosen to be a member of the Union, and she disagrees that there has been a lack of representation on their part.

Public portion of the hearing was closed.

3:06 p.m. Recess

3:17 p.m. Board commenced with deliberations. (M)Parker, (S)Pickard, Res. 02-14 adopted denying the appeal. Supervisor Parker noted that while there are similarities, he has a concern with fragmenting the bargaining unit based on information with SB 402. He stated he is not opposed to the animal control officers and dispatchers trying to find what they feel would be better or other representation. He suggested that the County might explore with them some other remedy, but he stated he does not believe that DSA is the appropriate remedy at this time. Discussion was held. Supervisor Pickard agreed with looking at other alternatives for representation. Supervisor Reilly stated she appreciates the information that was presented, and she feels there has been a great deal of advocacy for the positions. Supervisor Stewart stated he understands the situation with the animal control officers and feels they are closely related to the deputies, but does not feel this is the mechanism to address the problem. He noted the dispatchers are a key element of law enforcement and the job duties can be stressful when the call volume is high, and he suggested that perhaps salaries could be reviewed. Ayes: Balmain, Stewart, Parker, Pickard; Noes: Reilly. Supervisor Parker apologized to the Sheriff for asking about his involvement in these matters as an elected official – he stated he knows that Sheriff Richards is a strong advocate for the department and for the employees under his administration. Hearing was closed.

cc: Jeff Green, County Counsel
    Sandra Laird, Personnel
    Mary Hodson, Staff Analyst
    File