Unit Determinations under the Meyers-Millias-Brown Act: An Analysis of Alameda County Assistant Public Defenders Association v. County of Alameda

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UNIT DETERMINATIONS UNDER THE
MEYERS - MILIAS - BROWN ACT: AN ANALYSIS
OF ALAMEDA COUNTY ASSISTANT PUBLIC
DEFENDERS ASSOCIATION v. COUNTY
OF ALAMEDA

The Meyers-Milias-Brown (MMB) Act, governing the labor relations of local government employees in California, went into effect on January 1, 1969. While the act gives important new rights to "recognized" employee organizations, it fails to answer the initial question of who should bargain with whom. In an orderly system, unit determinations must be made before recognition is granted to a bargaining representative for only then can effective bargaining take place. A major defect of the MMB Act is its failure to provide procedures and criteria for the establishment of units and recognition of employee organizations. This deficiency is compounded by the fact that the only recourse for binding settlement of disputes as to these matters is to obtain a court decision.

This note discusses Alameda County Assistant Public Defenders Association v. County of Alameda, the first California appellate court decision to deal in detail with unit determinations under the Meyers-Milias-Brown Act. Its purpose is to explore the probable direction of

3. A "recognized" employee organization is one formally acknowledged by the public agency as an employee organization that represents employees of the public agency. See text accompanying notes 22-24 infra.
4. The bargaining unit is a defined group of jobs for which a recognized employee organization bargains. Schneider, Unit Determination: Experiments in California Local Government, 3 CAL. PUB. EMPL. REL. 1, 3 (Oct. 1969). Unit determination is the process by which jobs are divided up into appropriate units for the purpose of formal bargaining. Id.
5. See text accompanying notes 50-55 infra.
6. See Grodin, supra note 2, at 729-43.
7. See text accompanying notes 91-94 infra.
future case law in light of the precedent set by that decision. It will argue that the decision in that case should not be extended to deal with all questions of unit determination, but rather should be limited to its facts. It will go on to consider how future litigation may deal with the issue of unit determination, which is left unresolved by the legislation itself. In examining the court’s opinion, it is necessary to understand the structure and direction of labor relations under the MMB Act; therefore a short summary of the act follows as a preliminary to the discussion of the case.

**Meyers-Milias-Brown Act**

In 1961 the California legislature enacted the Brown Act⁹ to govern labor relations with all state and local government employees. This legislation was amended in 1968 as it related to local employees and became the Meyers-Milias-Brown Act.¹⁰ The Brown Act still applies to state employees and in 1971 was renumbered and codified as Government Code sections 3525-36. The Brown Act, as originally enacted and as in effect today, gives state employees “little more than the right to join or not to join employee organizations, and the right of employee organizations to be heard on employment matters affecting members.”¹¹ It does not require bargaining according to the private sector model; rather, it merely establishes a minimum level of communication between employers and employee organizations.¹² The statute speaks only of the obligation of the state

[to] meet and confer with representatives of employee organizations upon request, and [to] consider as fully as [it] deem[s] reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.¹³

Essentially, the language places the state government under a duty to listen to each employee organization when it speaks “on behalf of its members.” The term “employee organization” is defined generally as “any organization which includes employees of the state and which has as one of its primary purposes representing its members in employer-employee relations.”¹⁴ Therefore the Brown Act presumably imposes a duty upon the state government to meet and confer with as many organizations as its various employees might wish to join.¹⁵

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11. Grodin, supra note 2, at 719.
12. Id. at 725.
14. Id. § 3526(a).
15. Grodin, supra note 2, at 730.
The organizational rights of local public employees under the
MMB Act are comparable to those given state employees under the
Brown Act.\(^6\) The MMB Act, however, is markedly closer to the mo-

del of collective bargaining existing in the private sector.\(^7\) What had
been a duty to listen under the Brown Act became a duty to bargain
under the MMB Act.\(^8\)

The preamble to the MMB Act augmented the prior legislation
by stating as an additional purpose to promote full communication be-
tween public employers and their employees by providing a reasonable
method of resolving labor disputes in the public sector.\(^9\) The
“method” is further delineated in sections 3503-05, which set forth pro-
visions for the organization, scope of representation and rights of em-
ployee organizations, including the requirement that the public agency
meet and confer \textit{in good faith}. This latter requirement of “good faith”
imposes an obligation upon both the public agency and any recognized
public employee organization to meet promptly at the request of either
party, to confer for a reasonable period of time, and to \textit{endeavor to reach agreement} on employment matters.\(^20\) Although the parties are
not required to agree, and the actual character of a good faith endeav-
or is difficult to define, this section clearly bans unilateral action by
a public agency with respect to employment matters.\(^21\)

This duty to “meet and confer in good faith” is imposed upon the
public agency only with respect to a \textit{recognized} employee organization,
which is defined as one “which has been formally acknowledged by the
public agency as an employee organization that represents employees
of the public agency.”\(^22\) “Formal acknowledgment,” however, is not
defined, and the only condition imposed is that such recognition shall
not be unreasonably withheld.\(^23\) Nevertheless, recognition is important
since only \textit{recognized} employee organizations gain the substantial rights
granted to organizations by the MMB Act.\(^24\) Moreover, as will become


\(\text{\textsuperscript{17}}\) Grodin, \textit{supra} note 2, at 730.

\(\text{\textsuperscript{18}}\) \textit{id.} at 732. \textit{See} Schneider, \textit{supra} note 2, at A-3. The legislature denied public
employees \textit{full} collective bargaining by excluding them from the coverage of section 923
of the California Labor Code under which private employees have the right to strike.

\(\text{\textsuperscript{19}}\) \textit{id.} § 3500.

\(\text{\textsuperscript{20}}\) \textit{id.} § 3505.

\(\text{\textsuperscript{21}}\) Grodin, \textit{supra} note 2, at 753-54.

\(\text{\textsuperscript{22}}\) \textit{Cal. Gov't Code} § 3501(b) (West Supp. 1974).

\(\text{\textsuperscript{23}}\) \textit{id.} § 3507.

\(\text{\textsuperscript{24}}\) Except in cases of emergency a public agency is required to give \textit{reasonable}
written notice to each recognized employee organization affected by proposed changes
relating to employment matters and to give the organization the opportunity to meet
with the agency on the question. \textit{id.} § 3504.5. If agreement is reached between the
evident from this discussion, problems of recognition are inextricably intertwined with those of unit determination in establishing who bargains with whom.\textsuperscript{26}

Under the MMB Act the creation of units in the first instance is left to the public agency.\textsuperscript{26} The conferral of such discretion is considered a major defect in the act since the public agency as employer has a vested interest in the outcome.\textsuperscript{27} Moreover, although unit structure is critical to effective bargaining,\textsuperscript{28} the MMB Act sets up no procedures to be followed by public agencies in determining units and establishes no criteria with respect to unit determinations generally.

Section 3507 does authorize public agencies to adopt reasonable rules and regulations for the administration of the act after consultation in good faith with employee organizations. Such rules and regulations may include provisions on various subjects specified in the section, including "exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof" and "such other matters as are necessary to carry out the purposes of this chapter."\textsuperscript{29} However, the only binding remedy for violation of the act is court action, and the standard for judicial review of unit determination is the vague criterion of "reasonableness."

It is important to note that the meet-and-confer model\textsuperscript{30} of the MMB Act is substantially more comprehensive than the meet-and-listen approach of the Brown Act. Although the MMB Act does not grant full collective bargaining rights to public employees,\textsuperscript{31} it is a movement in that direction, particularly in light of the 1971 amendment which permits an agency to grant exclusive recognition to an organization as bargaining representative for the employees of the agency or an ap-

public agency and the recognized employee organization, they must jointly prepare a nonbinding written memorandum of understanding and present it to the governing body or its representative for determination. \textit{Id.} § 3505.1. If the public agency and recognized employee organization fail to reach agreement, they may agree on the appointment of a mediator to assist in reconciling the dispute. \textit{Id.} § 3505.2. Public agencies must allow a reasonable number of recognized employee organization representatives a reasonable amount of time off without loss of pay or other benefits when formally meeting with agency representatives on employment matters. \textit{Id.} § 3505.3.

25. See text accompanying notes 50-55 infra.
28. See text accompanying note 105 infra.
30. For a general description of the meet-and-confer approach, see \textsc{Advisory Commission on Intergovernmental Relations}, \textsc{Labor-Management Policies for State and Local Government} 12-19 (1969) [hereinafter referred to as \textsc{ACIR Report}].
The purposes of the MMB Act stated in the preamble are twofold: It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies.

This dual purpose of providing a reasonable method for resolving labor disputes and a uniform basis for recognizing the right of public employees to join and be represented by employee organizations is then qualified by the following language:

Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

Professor Joseph Grodin discusses the issue presented by this qualifying language, namely "whether and to what extent the qualifying language reflects a willingness on the part of the legislature to permit local regulation of covered subjects," and concludes that the quoted language protects only those local labor relations methods "which are consistent with, and effectuate the purposes of, the statute as a whole.

The California Court of Appeal in Los Angeles County Firefighters Local 1014 v. City of Monrovia rejected the city's contention that section 3500 exempted the city from the MMB Act since its preexisting rules and policies "provide for other methods of administering employer-employee relations." The court ruled that the legislature did not intend to preempt the field of public employer-employee relations except where public agencies do not provide reasonable "methods of administering employer-employee relations through . . . uniform and or-

33. Id. § 3500.
34. Id.
35. Grodin, supra note 2, at 724.
36. Id.
38. Id. at 294, 101 Cal. Rptr. at 81-82.
derly methods of communication between employees and the public agencies by which they are employed." Thus, the rules and regulations promulgated by public agencies must implement the general purposes of the MMB Act and must conform to its provisions for employee organization and representation as well as the other various duties and obligations which it imposes. To the extent that local rules and regulations do not meet these standards they are deemed unreasonable and are therefore preempted by the MMB Act.

By enacting a comprehensive statewide statute which overrides local rules and regulations not meeting its statutory standard, the legislature has undertaken to govern local public labor relations. This is a laudable endeavor; however, the legislation suffers from a major flaw. As Professor Grodin has observed:

A logical description of any statutory system of industrial relations should start by asking who is supposed to bargain with whom. As a practical matter, the answer may be more significant than what the law says they bargain about, or how they bargain, or what they do with the bargain once it is made. Bargaining structure is bound to have substantial effect upon what happens in the bargaining process no matter what the law may say. Unfortunately, it is precisely at this recognition stage that the MMB Act begins to bog down.40

Because questions of recognition and unit determination cannot be avoided, the legislature's failure to provide statutory guidelines is bound to result in litigation to resolve these issues. The preliminary question presented is whether a public agency must give recognition to every employee organization petitioning for recognized status upon a showing that the organization has members who are employees of the agency. As will be demonstrated, a requirement of general recognition will not further the purposes of the MMB Act and in fact will undermine the bargaining structure contemplated by the act.41 Unfortunately, in the Public Defenders decision, the court failed to confront this issue directly even though the question of general recognition underlay much of the court's reasoning.

The Public Defenders Case

In Alameda County Assistant Public Defenders Association v. County of Alameda,42 the Alameda County Board of Supervisors had enacted, pursuant to the Meyers-Milias-Brown Act, an ordinance to regulate the organization and administration of county employer-employee

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39. Id. at 295, 101 Cal. Rptr. at 82, citing CAL. GOV'T CODE § 3500 (West Supp. 1974).
40. Grodin, supra note 2, at 729.
41. See text accompanying notes 50-77 infra.
relations. Acting under these regulations, the Public Defenders Association petitioned the county for recognition as the representative of attorneys employed in the public defender's office. Rather than establish a separate bargaining unit for the public defenders, however, the county created Unit XI, which grouped the attorneys with all other non-health-related professional employees, including librarians, planners, agricultural inspectors, auditors, buyers, systems and procuring analysts, appraisers and engineers.

Apparently accepting this classification, the Public Defenders Association formed a coalition with three other employee organizations, including the Western Council of Engineers. The organization, known as the Coalition of Professional Employees, filed a petition for certification with the county as the recognized employee organization for Unit XI, challenging a similar petition previously filed by the Alameda County Employees Association. A secret-ballot election resulted in a majority vote favoring the Alameda County Employees Association as the exclusive recognized employee organization for the unit. The Public Defenders Association then petitioned the Alameda County Superior Court for a writ of mandamus to compel the county to establish a separate unit for the attorneys in the public defender's office. The trial court denied the petition, finding that Unit XI had been established in accordance with law and that the Public Defenders Association was not entitled to a unit separate from Unit XI.4

On appeal the court, applying the "community of interest" test, concluded that the attorneys in the public defender's office are sui generis and reversed the trial court's decision. The court held that since the attorneys not only had an organization of their own choice, but also had little, if any, community of interest with the other professional employees in Unit XI, it was unreasonable to force them into the larger unit. Since Government Code section 3507 requires that unit determinations be made on a reasonable basis and the establishment of Unit XI failed to meet that standard, the court concluded the writ must issue.45

Although it may be argued in the future that the Public Defenders case stands for the proposition that any group of public employees who can show a distinct community of interest are, as a matter of law, entitled to a separate unit, this note will argue that, based upon an analysis of the opinion, the MMB Act, and related authorities, the Public Defenders case should not be considered as precedent for so broad a proposition.

43. Id. at 827-28, 109 Cal. Rptr. at 393-94.
44. See text accompanying note 128 infra.
45. 33 Cal. App. 3d at 832, 109 Cal. Rptr. at 396.
At the outset of its opinion the court in *Public Defenders* framed the issue of unit determination as follows:

**Question Presented**

Does the establishment of Unit XI illegally deny the Assistant Public Defenders . . . the right to representation by a professional organization of their own choice?\(^{46}\)

Later the court restated the problem in the following language:

[T]he real question is whether, in view of the fact that the assistant public defenders had an organization of their own and chose to have it as their sole bargaining body, the county could deny organization representation and force the public defenders into Unit XI.\(^{47}\)

Finally, the court presented the question a third time:

Another way of stating the issue is whether requiring all professional employees, regardless of their type, to be in one organization for the administration of employer-employee relations is reasonable and appropriate, in view of section 3507, providing that the county may adopt "reasonable rules and regulations" and may create "appropriate" units for this purpose.\(^{48}\)

This latter formulation presents the most precise statement of the issue actually decided but fails to construe the language giving employees the right to be represented by an organization "of their own choice."\(^{49}\)

The difficulty the court encountered in formulating the issue stems from its conclusion that a reasonable and appropriate unit is somehow dependent upon whether a group of employees included therein wish to be represented by an organization different from that chosen by a majority of employees in a unit. This issue of general recognition will be considered first, followed by a discussion of the court's ruling that, based on the community of interest test, Unit XI is unreasonable and therefore inappropriate.

**General Recognition**

**The Concept Defined**

As stated above, the MMB Act gives substantial new rights to "recognized" employee organizations.\(^{50}\) Whether unit determination is a problem depends on the recognition system adopted by a public agency.\(^{51}\) The public agency may adopt a system of general recognition, thereby granting recognition to any organization which can show it has members who are employees of the public agency and who wish

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\(^{46}\) *Id.* at 827, 109 Cal. Rptr. at 393.

\(^{47}\) *Id.* at 829, 109 Cal. Rptr. at 394.

\(^{48}\) *Id.*

\(^{49}\) CAL. GOV'T CODE § 3500 (West Supp. 1974).

\(^{50}\) See text accompanying notes 20 & 24 *supra*.

\(^{51}\) Schneider, *supra* note 2, at A-12.
to be represented by that organization. If this approach is chosen the establishment of bargaining units is unnecessary.

A second suggested system of recognition is one under which the public agency grants "recognized" status only to organizations selected by majority vote of agency employees, but allows "minority" groups to make presentations and to have such presentations taken into consideration by the public agency. A third system of recognition involves the selection of a single bargaining agent elected by majority vote in a particular unit. This exclusive bargaining agent must fairly represent all employees in the unit, whether or not they are members of the employee organization, and other organizations are precluded from negotiating with the agency on employment matters. If either of the latter two systems is adopted, the particular group of public employees (or unit) for which the recognized employee organization will bargain must be determined prior to recognition.

The County of Alameda adopted rules and regulations pursuant to which employee representation units were established, and recognition was granted only to those organizations elected by a majority of employees within a unit as their bargaining agent. The Public Defenders Association argued that the assistant public defenders were entitled to representation by their own bargaining organization under Government Code section 3500, which provides that one purpose of the MMB Act is to improve employer-employee relations by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies.

The court noted this contention but neither explicitly accepted nor rejected it. Rather, it stated that while Unit XI might be appropriate for professional employees who do not have their own organization, the real question was whether the county could recognize the Public Defenders Association once it had been chosen by the attorneys as their sole bargaining representative. Having framed the issue in this manner, the court never explicitly discussed it; in its conclusion, however, it did state that denying recognition to the Public Defenders Association...
tion "violates section 3507 of the Government Code in that [through such a denial] professional employees with common interests and having an organization of their own choice, are unreasonably forced into an organization with other employees with whom there exists little, if any, community of interest." The construction placed upon the phrase "of their own choice" is crucial. In view of the broad impact upon employer-employee relations and the structure of bargaining under the MMB Act, it is unfortunate that the court construed this language by implication only, neither analyzing the problems involved nor considering the ramifications of such construction.

The Difficulty of General Recognition

If the argument of the Public Defenders Association is accepted, then any organization which can show that it has members who are employees of the public agency and who wish to be represented by that organization is entitled to recognized status. Furthermore, if a public agency wished to grant exclusive bargaining status to one employee organization pursuant to rules and regulations adopted under Government Code section 3507, it would be required to establish a separate unit for each group of employees with an organization "of their own choice." The result would be to require either recognition of every organization with public employee members without regard to the establishment of units, or the establishment of a multitude of units, each having an exclusive bargaining representative. In either case, the sole criterion for the establishment of a unit would be a desire by a group of employees to be represented by that particular organization.

Such a result would be chaotic and thus should be rejected, not only because it contravenes the specific purpose of the MMB Act to provide "a reasonable method of resolving disputes," but also because it is in conflict with the overall structure of bargaining contemplated by other provisions of the act. The 1968 amendments to the Brown Act added the term "recognized" as descriptive of employee organizations to which rights, duties and obligations of the MMB Act accrue; and section 3507 provides that recognition shall not be unreasonably withheld, suggesting that an agency may reasonably withhold recognition under some circumstances. The further addition of the 1971 "exclusive" recognition amendment supports an argument that the legislature intended that public agencies might, without violating the act, adopt rules and regulations which preclude a policy of general recognition.

60. Id. at 832, 109 Cal. Rptr. at 396 (emphasis added).
62. Id. § 3503, amending id. § 3503 (West 1966).
63. Id. § 3507 (West Supp. 1974).
64. See Sacramento County Employees Org. Local 22 v. County of Sacramento,
A requirement of general recognition cannot logically be reconciled with the clear language of section 3507 permitting exclusive recognition of a bargaining representative pursuant to a vote of the employees. If a public agency were required to recognize every organization which could show that its members included agency employees, then a vote of the employees to determine an exclusive bargaining representative would serve no purpose and this agency option would be foreclosed.

Only when a sole employee organization wished to represent the public employees could the public agency recognize that organization as representative for the employees without a vote, and it would in effect be the “exclusive” bargaining representative. If more than one organization sought to represent the employees, then a vote would be meaningless, since the public agency would be required to recognize both employee organizations. In order to grant “exclusive” status to a bargaining representative the public agency would have to establish a separate “appropriate” unit for every group of employees choosing a particular employee organization to represent them.

The court in Public Defenders noted that the Public Defenders Association brief stated that 92 percent of attorneys in the public defender's office wished to be represented by the Public Defenders Association. Under the argument advanced by the association, the 8 percent who did not choose the Public Defenders Association would be entitled to representation by an employee organization “of their own choice.” Thus, if it wished to grant exclusive bargaining representative status, the public agency would necessarily be required to establish two separate units for the public defender's office alone. Presumably the same treatment would have to be afforded to a third faction of the public defenders if it chose to be represented by an entirely different organization. The end result would be that the clear language of section 3507 permitting “exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof” would be rendered meaningless.

**NLRA Decisions Persuasive**

The court in Public Defenders noted that judicial construction of the language of the National Labor Relations Act would be persuasive in construing similar language in the MMB Act. Such construction

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28 Cal. App. 3d 424, 104 Cal. Rptr. 619 (1972) (upholding the deduction of dues only from the wages of members of an employee organization recognized as exclusive bargaining agent for a unit).

65. 33 Cal. App. 3d at 828, 109 Cal. Rptr. at 393.
67. 33 Cal. App. 3d at 829, 109 Cal. Rptr. at 394, citing International Ass’n of
lends support to the argument that the language of the MMB Act granting public employees the right "to join organizations of their own choice and be represented by such organizations" should not be construed to require a public agency to recognize every organization which can show it has members who are employees of the agency and wish to be represented by that organization.

Section 7 of the NLRA provides in part that "[e]mployees shall have the right . . . to bargain collectively through representatives of their own choosing. . . ." In construing this language the United States Supreme Court held the right of employees to bargain collectively through a representative "of their own choosing" is subject to the condition that the bargaining unit be one declared appropriate by the National Labor Relations Board:

The petitioners' contention that § 9(a) grants to the majority of employees in a unit appropriate for such purposes the absolute right to bargain collectively through representatives of their own choosing is correct only in the sense that the "appropriate unit" is the one declared by the Board under § 9(b), not one that might be deemed appropriate under other circumstances.

Thus, under the NLRA, the board first establishes an appropriate bargaining unit; once this is done, the employees have the absolute right to be represented by an organization of their own choosing or, if they so choose, by no organization at all. Whether or by whom the employees choose to be represented is typically determined by majority vote in a secret-ballot election conducted by the NLRB. Even though a minority of employees in the unit may wish to be represented by a different organization, they will be bound by the choice of the majority. The language which allows employees to be represented by an organization "of their own choosing" does not confer on a minority of unit members the absolute right to separate representation.

The MMB Act provides that a public agency may adopt reasonable rules and regulations, which may include provision for "exclusive recognition of employee organizations formally recognized pursuant to a vote

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Firefighters v. County of Merced, 204 Cal. App. 2d 387, 392, 22 Cal. Rptr. 270, 274 (1962). "The precedents established in the private sector under the National Labor Relations Act have been repeatedly referred to by various state boards, especially where there is a parallel or analogous statutory provision involved." Shaw & Clark, Determination of Appropriate Bargaining Units in the Public Sector, 51 ORE. L. REV. 152, 163 n.72 (1971) [hereinafter cited as Shaw & Clark].

70. Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146 (1941).
71. Id. at 152-53.
73. 313 U.S. at 152-53.
of the employees of the agency or an appropriate unit thereof . . . .”74
The court in Public Defenders noted that the phrase “an appropriate unit” parallels the language of NLRA section 9(a) allowing the NLRB to certify labor organizations selected by a majority of employees in a “unit appropriate for such purposes.”75 By reference to the Supreme Court holding in Pittsburgh Plate Glass Company v. NLRB76 construing language similar to that of the MMB Act, it seems clear that the right of public employees under section 3500 to be represented by an organization “of their own choice” should be subject to the condition of section 3507 that the bargaining unit be an appropriate one established under reasonable rules and regulations adopted by the public agency.

A requirement of general recognition is not in conformity either with the declared purpose of the MMB Act to provide a reasonable method of resolving labor disputes or with the structure of bargaining established by the act. In analyzing the concept, Professor Grodin has stated:

To require a public agency to meet and confer in good faith, as that phrase is currently defined, with every organization which can prove it has members within the agency and to extend to all such organizations the privileges ancillary to recognition is simply not feasible for large public employers. Such a requirement would place too great a burden upon the public agency; it would foster rivalry and dissension among organizations; and, by making negotiations more complex and agreement more difficult, it would tend to frustrate the stated objectives of the statute. Meeting and conferring in the MMB Act sense could not effectively take place in such a framework.77

Individuals and the MMB Act

Although a proliferation of units in the public sector is considered by many writers to be undesirable,78 the court in Public Defenders stated that the establishment of a separate unit for the assistant public defenders would not place an increased burden on the county79 in light of Government Code section 3502, which grants to public employees “the right to represent themselves individually in their employment relations with the public agency.”80 The court did not expand

75. 33 Cal. App. 3d at 829, 109 Cal. Rptr. at 394.
76. 313 U.S. 146 (1941).
77. Grodin, supra note 2, at 734.
79. 33 Cal. App. 3d at 832, 109 Cal. Rptr. at 396.
80. CAL. GOV'T CODE § 3502 (West 1966).
further on this statement, and it is exceedingly difficult to see how the court could have reached its conclusion or what implications may reasonably be drawn therefrom since presumably an individual employee could not claim the extensive rights extended to employee organizations under the MMB Act.

Although it did not cite the case, the court seems to have been following the line of reasoning set forth in *Los Angeles County Firefighters Local 1014 v. City of Monrovia*. There the city had enacted an ordinance recognizing an employee association as the *only* organized group that could speak on behalf of all city employees in their employment relations. Twenty of the city's twenty-one firefighters belonged to the plaintiff union which sought and was granted a writ of mandate compelling the city to recognize the union formally as the bargaining representative of the firefighters. The court of appeal affirmed.

In a rather cryptic opinion, the court construed the purpose of the MMB Act to include "the right of public employees, as *individuals* and as members of organizations of their own choice, to negotiate on equal footing with other employees and employee organizations without discrimination . . . ." The court held that a city's recognition of a municipal employee association as the *only* organized group that could speak on behalf of city employees in their employment relations, coupled with an unwritten "open door policy" under which all individuals and organization representatives were permitted to speak, did not constitute sufficient compliance with the MMB Act. The court found this system to be defective because individuals and unrecognized organizations were placed thereby in a secondary position relative to recognized organizations and might not be aware of their right to speak under the "open door policy"; thus, the rights, duties and obligations were not extended as provided by the act to unrecognized employee organizations and *individuals*.

Neither *City of Monrovia* nor *Public Defenders* squarely considered whether an individual might claim all of the rights, duties and obligations extended under the MMB Act to recognized employee organ-

82. The court made its decision under both the Firefighters Act and the MMB Act. Although Government Code section 3501(d) specifically includes local firefighters under the MMB Act, Labor Code sections 1960-63, enacted in 1959, protect the organizational rights of both state and local firefighters. The Firefighters Act obligates a public agency to negotiate with the union or association chosen by the firefighters. International Assn' of Firefighters v. City of Palo Alto, 60 Cal. 2d 295, 32 Cal. Rptr. 842, 384 P.2d 170 (1963).
83. 24 Cal. App. 3d at 295, 101 Cal. Rptr. at 82.
84. *Id.* at 295-96, 101 Cal. Rptr. at 82.
izations. Such a construction of the act, however, would seem to be both unreasonable in light of the overall bargaining structure contemplated by the act and contrary to the clear language of certain sections setting forth the duties of public agencies under the act.

In accord with the purpose and intent of the act, a public agency is required to give written notice of proposed legislation affecting working conditions to recognized employee organizations and to meet and confer in good faith with such organizations. The written memorandum agreement required by section 3505.1 and the mediation provisions of section 3505.2 apply only to recognized employee organizations, as does section 3507 authorizing the agency to adopt reasonable rules and regulations after consultation with representatives of employee organizations. In short, the substantial duties imposed upon public agencies under the MMB Act are generally imposed only in relation to organizations which public employees may choose to join and designate as their representative. It would be unreasonable, and therefore contrary to the purpose set forth in section 3500, to impose upon a public agency the duty to extend to each individual employee the substantial rights granted to recognized employee organizations by the act. The legislature obviously did not intend to place such a burden on public agencies.

Furthermore, turning to judicial interpretation of the NLRA for guidance, it has been held to be fundamental that "the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain. The Act therefore does not empower the Board to certify where only one employee is involved." Although the MMB Act establishes a meet-and-confer bargaining structure rather than full collective bargaining, it is fundamental that a meet-and-confer method of resolving labor disputes also presupposes a bargaining unit of more than one individual employee. The reasoning of the court in City of Monrovia and in Public Defenders to the effect that section 3502 and the general purposes of the MMB Act require the substantial duties and obligations of a public agency to be imposed in relation to individual employees is dicta which should not be followed by courts in the future. If the issue is ever squarely before the court, the above analysis would support a holding that although individual employees retain the right to represent themselves individually in their employment

86. Id. § 3504.5.
87. Id. § 3505.
88. Id. §§ 3505.1, 3505.2, 3507.
relations with the public agency employer, they are not given the substantial rights which accrue to employee organizations.

The Absence of General Unit Criteria

Accepting the argument that the MMB Act does not require general recognition of every employee organization which can prove it has members who are agency employees, and further, that a public agency may, in accordance with the clear provisions of section 3507, adopt reasonable rules and regulations under which only one bargaining representative will be recognized pursuant to a vote of the employees, the sole question is whether the unit established by the public agency for this purpose is reasonable and appropriate.

The standard by which a public agency is governed in determination of appropriate bargaining units is whether such a determination is "reasonable." It is readily apparent that the test of reasonableness is a vague one, and thus it becomes necessary to fashion more specific criteria which public agencies may use as guidelines in establishing units, i.e. to give substance to the term "reasonable" as it applies to unit determinations.

Unlike the National Labor Relations Act governing the private sector, the federal executive order pertaining to bargaining by federal employees, and other state statutes which require bargaining with government employees, the MMB Act fails to provide a neutral procedure for establishing units in the first instance. Instead, the specific procedure to be followed is left to the discretion of the local public agency (i.e. the employer), and there is no statutory requirement of procedural neutrality. The act does provide that in the absence of local procedures the dispute shall, upon the request of either party, be submitted to the Department of Industrial Relations for mediation or recommendation for resolving the dispute. The section does not apply where a local procedure has been adopted. Since mediation does not result in a binding decision and since no provision is made in the act

90. 33 Cal. App. 3d at 830, 109 Cal. Rptr. at 394-95.
91. Grodin, supra note 2, at 741 & n.98. For a short description of such unit determination and recognition procedures elsewhere, see Schneider, Unit Determination: Experiments in California Local Government, 3 CAL. PUB. EMPL. REL. 1, 4-8 (Oct. 1969).
92. It has been suggested that "[c]ourts could determine, under the current statutory provisions, that any system of unit determination which fails to provide for neutral determination in the event of dispute is at least presumptively invalid . . . ." Grodin, supra note 2, at 742.
94. Government Code section 3501(e) defines mediation as an "effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and
for a binding resolution of conflicts over unit determinations, final resolution of any dispute is left to the courts.

The MMB Act establishes no criteria as to unit determinations generally, and the only basis for judicial review is the vague standard of "reasonableness" found in section 3507. The act provides specific criteria for unit determinations only for peace officers and and professional employees. A public agency is authorized under the act to adopt rules prohibiting peace officers from joining, organizing or participating in employee organizations unless the organization is composed solely of such peace officers and concerned solely with employment matters and professional advancement of peace officers. Adoption of such a rule would, of course, necessitate establishment of a separate unit for peace officers. The act also gives professional employees the right to be represented separately from nonprofessional employees by an organization consisting of such professional employees; it does not, however, expressly grant to one professional group the right to be represented separately from other professional groups. The only other specific statutory guideline for the courts is the separate legislation of the Labor Code under which firefighters have the right to separate representation.

The court in Public Defenders held that the right of a particular professional group to separate representation is to be determined under section 3507 allowing a public agency to establish appropriate units. The court stated that "[t]he discretion given the county under section 3507 appears to be as broad as that given to the Labor Relations Board under the National Labor Relations Act." The NLRB exercises wide discretion in determining the unit appropriate for collective bargaining, a discretion which has been characterized as bordering on finality.

The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decision. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed.

95. Id. § 3508.
96. Id. § 3507.3.
97. 33 Cal. App. 3d at 832, 109 Cal. Rptr. at 396.
98. See note 82 supra.
99. 33 Cal. App. 3d at 832, 109 Cal. Rptr. at 396.
100. Id. at 830, 109 Cal. Rptr. at 394.
Therefore, the board's determinations as to appropriate units, if reasonable, are binding upon reviewing courts.104

Although the court in Public Defenders did not state that a public agency's discretion under section 3507 actually is as broad as that of the NLRB in making unit determinations, the standard of reasonableness does give the agency broad discretion. If this discretion were as broad as that of the NLRB, it would seem that unless an agency violated the statutory provisions as to peace officers, professional employees, or firefighters, the unit found appropriate by the public agency would ordinarily be left undisturbed by the courts.

Arguably such broad discretion should not be vested in a public agency. Unlike the NLRB, a public agency, as employer, is not neutral, but rather is an interested party. To whatever extent the unit was not established through a procedure ensuring neutrality, fairness requires a court in settling a representational dispute to look more closely at the record to determine whether the unit established is appropriate in light of the particular circumstances.

Thus, in spite of the broad discretion the court in Public Defenders seems to find in a public agency, the court itself determined on the facts that Unit XI as established by the county was inappropriate. By so holding, the court sanctioned a broader scope of review of unit determinations under the MMB Act than is applicable to NLRB determinations.

**Appropriate Unit**

In the Public Defenders decision, the court quoted Professor Grodin as follows:

Unit determinations are as critical to the bargaining process as districting is to the political process. Such determinations affect not only the number but also the character of the organizations which represent an agency's employees. The definition of units may determine, for example, such matters as whether traditional civil service employees associations gain or lose strength in comparison to unions, whether craft unions gain or lose strength in comparison to unions seeking to represent employees on departmental or cross-departmental bases, and the like. The procedure by which such decisions are made, and the criteria brought to bear upon the decisions, are among the most significant factors in any industrial relations system.105

As noted above,106 the MMB Act does not provide any particular procedure for making unit determinations nor does it set forth any gen-


105. 33 Cal. App. 3d at 831-32, 109 Cal. Rptr. at 396, quoting Grodin, supra note 2, at 738.

106. See text accompanying notes 91-94 supra.
eral criteria to be used. What guidelines, then, does the Public Defenders decision provide for making unit determinations? At the outset, it may be observed that the Public Defenders decision is very loosely organized; and it is frequently difficult to determine how a particular authority supports the court's conclusion that Unit XI was inappropriate. The court made numerous disconnected references to the NLRA and judicial decisions thereunder without stating how these authorities are to be applied in construing the MMB Act and without relating these authorities in any clear manner to the case decided. Indeed, it would seem that in light of the wide discretion the court suggested is vested in a public agency to make unit determinations, an application of judicial decisions under the NLRA to the facts of the Public Defenders case would lead to the conclusion that Unit XI, as established by the county, was not clearly unreasonable, and was, therefore, appropriate.

Apparently, the court wished to achieve two somewhat conflicting goals: (1) to establish the principle that decisions under the NLRA may be used as guidelines for deciding representation disputes under the MMB Act, and (2) to decide the case at bar in favor of a separate unit for attorneys in the public defender's office. Since unit determinations are ordinarily factual determinations to be made on the basis of the circumstances of each particular case, the fact that the court ostensibly placed reliance on NLRA decisions is of great importance, and the decision that attorneys are sui generis in relation to other professional groups is of relatively minor importance. Thus, it is appropriate to look more closely at the Public Defenders and NLRA decisions to extract therefrom any principles applicable to unit determinations in general.

As noted by the court in Public Defenders, the language of "an appropriate unit" in Government Code section 3507 parallels the language of the NLRA allowing the National Labor Relations Board to certify labor organizations selected by a majority of employees in a "unit appropriate for such purposes." Having indicated that case law construing the language of the NLRA is helpful in construing the similar language of the MMB Act, the court quoted Professor Grodin: "The 1971 'exclusive recognition' amendment to section 3507 uses the term 'appropriate unit,' arguably inviting reference to standards of appropriateness established elsewhere in the private and public sectors."

108. 33 Cal. App. 3d at 829, 109 Cal. Rptr. at 394.
110. 33 Cal. App. 3d at 829, 109 Cal. Rptr. at 394.
111. Id. at 830, 109 Cal. Rptr. at 395, quoting Grodin, supra note 2, at 741. The court continued to quote Professor Grodin as follows: "It [the exclusive recognition
What standards did the court find helpful? The court continued:

Numerous cases have pointed out that the board need not determine the ultimate unit or the most appropriate unit. The act requires only that the unit be "appropriate."\textsuperscript{112}

Having stated the above, the court left it to be inferred that, like the NLRB, a public agency is not required to establish the best of all possible units, but only a unit which is "appropriate." Like the legislature, the court seems unwilling to commit itself to any binding rules applicable to unit determinations. However, in accord with the foregoing principle, the court's ruling that forcing the public defenders into Unit XI is unreasonable leads to the conclusion not that Unit XI is less appropriate than some other unit, but that Unit XI is not appropriate at all.

Before turning to factors used by the NLRB in determining units, it should be noted that under the NLRA the propriety of a unit is "a question of fact to be determined by the board upon the facts of each case."\textsuperscript{113} The board has held that each unit determination must have a direct relevancy to the circumstances within which collective bargaining is to take place\textsuperscript{114} and that there may be more than one way in which the employees may appropriately be grouped.\textsuperscript{115} Unlike a court, which renders its decisions under the principle of res judicata, the NLRB is not bound by its previous statements regarding the appropriateness of a particular unit.\textsuperscript{116} Furthermore, "prior board unit determinations in other cases have precedential value only in the sense that they disclose facts the board has previously considered relevant."\textsuperscript{117}

The court in Public Defenders established this same case-by-case principle for evaluating unit determinations under the MMB Act, quoting NLRB v. Hearst Publications, Inc.;\textsuperscript{118}


\textsuperscript{113} NLRB v. Winn-Dixie Stores, Inc., 341 F.2d 750, 756 (6th Cir.), cert. denied, 382 U.S. 830 (1965).

\textsuperscript{114} Kalamazoo Paper Box Corp., 136 N.L.R.B. 134, 137 (1962).


\textsuperscript{116} District 50, UMW v. NLRB, 234 F.2d 565, 568 (4th Cir. 1956).


\textsuperscript{118} 322 U.S. 111, 134 (1944).
Wide variations in the forms of employee self-organization and the complexities of modern industrial organization make difficult the use of inflexible rules as the test of an appropriate unit. Congress was informed of the need for flexibility in shaping the unit to the particular case and accordingly gave the Board wide discretion in the matter.\textsuperscript{119}

Certainly, there are similar wide variations in the forms of employee self-organization in the public sector.\textsuperscript{120} Great complexities result from the fact that the MMB Act governs the employer-employee relations of a multitude of public employers of varying size, function, composition and purpose,\textsuperscript{121} and these complexities would make the use of inflexible rules as difficult in the public as in the private sector. That is not to say that some guidelines or standards of appropriateness would not be useful, or even necessary, but only that it would be unwise to set forth inflexible rules of law governing the establishment of bargaining units.

In determining the appropriateness of a bargaining unit, various tests have been applied. The NLRB has traditionally looked to such factors as "the community of interest among the employees sought to be represented; whether they comprise a homogeneous, identifiable, and distinct group; whether they are interchanged with other employees; the extent of common supervision; the previous history of bargaining; and the geographic proximity of various parts of the employer's operation."\textsuperscript{122} In the public sector the most frequently mentioned criteria are a clear and identifiable community of interest; a prior history of employee bargaining; and the probability of effective dealings and efficient operations resulting from the proposed unit.\textsuperscript{123} A definite trend toward designing criteria to avoid fragmented bargaining units in the public sector has been observed.\textsuperscript{124}

The ordinance pursuant to which Unit XI was established by the County of Alameda included the three common criteria above mentioned. First, it provided that each unit "shall encompass as many posi-

\begin{itemize}
\item \textsuperscript{119} 33 Cal. App. 3d at 830, 109 Cal. Rptr. at 394.
\item \textsuperscript{120} See Schneider, \textit{supra} note 2, at A-5, which discusses present public employer-employee relationships in California and some of the vast differences, from jurisdiction to jurisdiction, in the strength, character and goals of employee organizations and in the attitudes of employers to these organizations.
\item \textsuperscript{121} Government Code section 3501(c) defines public agency to mean "every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not" but excluding for purposes of the MMB Act public school districts and the State of California.
\item \textsuperscript{122} Metropolitan Life Ins. Co., 156 N.L.R.B. 1408, 1412 (1966).
\item \textsuperscript{123} Shaw & Clark, \textit{supra} note 67, at 154.
\item \textsuperscript{124} \textit{Id.} at 154,
\end{itemize}
tion classifications as possible” consistent with the organizational and representation rights of the employees. Such a provision is reflective of the county’s interest as employer in having large units, which public agencies usually find more efficient and manageable than small ones. Within the limits of that policy, the criteria to be used in determining units included such factors as community of interest, history of representation, and general field of work. Nonetheless, in considering the appropriateness of Unit XI, the court seems to have relied solely on the community of interest test.

The court in Public Defenders cited Douglas Aircraft Co., Inc. as persuasive on this point. There the NLRB found that engineers possessed a unique community of interest based upon the distinct nature of their function, their separate supervision and work place, the lack of substantial interchange with other professional employees, and the fact they were separately hired by the departmental supervisor. Applying these factors, the court found that the public defenders also had a unique community of interest; and, having an organization of their own, the public defenders were entitled to a separate unit. However, the court neither discussed nor apparently considered the other factors normally used in making unit determinations.

A heavy reliance on the community of interest test tends to cause a proliferation of units. The librarians in Unit XI, for example, presumably have a function distinct from the agricultural inspectors in that unit; they also have separate supervision, place of work and hiring procedures, and have little interchange with agricultural inspectors. The same could be said of agricultural inspectors in relation to auditors, or buyers in relation to engineers. If it is unreasonable to force attorneys into a unit with librarians, planners, etc., would it not, then, also be unreasonable to force librarians into a unit with agricultural inspectors and auditors? A case can certainly be made for small units. Without such

125. 33 Cal. App. 3d at 830, 109 Cal. Rptr. at 395.
126. ACIR REPORT, supra note 30, at 74; P-H 1973 PUB. PERSONNEL ADMIN.—LAB. MAN. REL. ¶¶ 5222-23 [hereinafter cited as P-H, PPA].
127. 33 Cal. App. 3d at 830-31, 109 Cal. Rptr. at 395.
128. 157 N.L.R.B. 791 (1966); accord, Westinghouse Elec. Corp. v. NLRB, 236 F.2d 939 (3rd Cir. 1956). Both of these cases upheld the establishment of a separate unit for professional engineers based upon the record, neither reviewing body finding the action of the agency below to be unreasonable or arbitrary. It does not follow that the converse (i.e. including engineers in a unit with other professionals) would necessarily be unreasonable and arbitrary, since the burden of showing the unreasonableness of a unit is on the challenging party.
129. 33 Cal. App. 3d at 831-32, 109 Cal. Rptr. at 395-96.
130. Id. at 831, 109 Cal. Rptr. at 395-96.
131. Id. at 832, 109 Cal. Rptr. at 396.
132. Rock, supra note 78, at 1004.
133. Id. at 1005.
units the specialized interests and needs of a single craft, classification or department might be subordinated to the wishes of a larger unit's majority. Minority groups are more likely to feel that their specialized interests have not been adequately recognized by the majority of a large unit, leading to internal friction. In addition, a smaller unit which performs an essential function may be able to strike a better bargain for itself if it does its own negotiating.

The employee's main concern is to have a unit which will provide him with the maximum amount of self-determination and economic power. From the standpoint of both the employer and the public, however, it is crucial that unit determination be consistent with efficient government operations. Too many units can result in an inconsistent wage and benefit structure among employees doing essentially the same work or can lead to interunion rivalry and "me-tooism," with the employer caught in the middle, resulting in serious and continuing conflict and wage escalation. Moreover, because authority in the public sector is divided, too many units can lead to staggering administrative snarls. In addition, the smaller the unit the more likely it is that the employee organization will be required to bargain with lower level management. Bargaining at lower levels will in turn affect the scope of bargaining since the management representative may have limited power to make agreements, particularly as to wages.

An unmanageable proliferation of bargaining units may be prevented by using the criterion of efficient governmental operations to balance the community of interest test. In other words, the public agency's legitimate interest in efficiency must be balanced against a general policy favoring the right of public employees to exercise the rights of self-organization. It is not at all clear that the court in the Public Defenders case applied such a balancing test. It can be inferred, however, that some balancing did occur in light of the court's conclusion that allowing a special unit for the public defenders would not further burden the public agency in view of the right of individual employees to represent themselves in their employment relations with the agency.

134. Id.
135. Bok & Dunlop, supra note 78, at 324.
136. Rock, supra note 78, at 1005.
137. ACIR Report, supra note 30, at 74; P-H, PPA, supra note 126, ¶ 5223.
138. P-H, PPA, supra note 126, ¶ 5227.
139. Id. ¶ 5222. See Bok & Dunlop, supra note 78, at 325.
140. P-H, PPA, supra note 126, ¶ 5222.
141. Id.
142. Id. ¶ 5227.
143. 33 Cal. App. 3d at 832, 109 Cal. Rptr. at 396.
Although this note raises some question regarding the validity of the court's statement concerning the burden placed on a public agency by a greater number of units, it is certainly proper and indeed necessary for a court to weigh the competing interests of the public agency and the employees when reviewing the appropriateness of a particular unit. Reference to the practice in the private sector provides additional support for such a balancing of interests:

In determining an appropriate bargaining unit, the Board considers two aspects of the problem. It must weigh the factors which indicate a centralized management and integrated functioning of the business with the factors which indicate that the employees do not share a community of interest."^{144}

In summary, the following standards of "appropriateness" may be gleaned from the Public Defenders opinion. First, a public agency need not establish the ultimate or most appropriate unit; the MMB Act requires only that the unit be "appropriate." Second, the appropriateness of a unit is a question of fact to be determined by a public agency on a case-by-case basis. Third, standards of appropriateness established by the National Labor Relations Board are persuasive in determining the appropriateness of a unit established under the MMB Act. Fourth, in establishing appropriate units the public agency should balance its own interest in creating large units with that of the employees in having smaller units. Finally, the standard by which the public agency is to be governed in determining the appropriate bargaining unit is whether or not such determination is reasonable.

Conclusion

In Alameda County Assistant Public Defenders Association v. County of Alameda, the California Court of Appeal held that denying recognition to the Alameda County Public Defenders Association violated section 3507 of the Government Code. The court's decision was based on its conclusion that such a denial unreasonably forced professional employees with common interests and an organization of their own choice into an organization with other professional employees with whom there existed little, if any, community of interest. This note has argued that this decision should be limited to its facts and that many of the statements made by the court are dicta which serve to indicate the probable direction of future case law, but which should be analyzed in light of the overall bargaining structure contemplated by the MMB Act and the practicalities of bargaining within such a framework.

Lacking a neutral procedure for creating units in the first instance, general criteria for the creation of units, and a procedure for binding

144. NLRB v. Sunset House, 415 F.2d 545, 549 (9th Cir. 1969).
settlement of disputes, the MMB Act burdens the courts with the difficult task of formulating principles of law to be followed in resolving representational disputes. The apparent unwillingness of the Public Defenders' court to articulate clear and binding rules of law is justified by the need to establish units on a case-by-case basis considering the particular circumstances within which bargaining will take place, and in view of the need for flexibility in developing rules which will effectuate the general purposes of the MMB Act.

As illustrated by the foregoing analysis, a requirement of general recognition will not promote the purposes of the MMB Act and will, in fact, undermine the bargaining structure contemplated by the legislation. Therefore, the Public Defenders decision should not be interpreted to require such general recognition. Furthermore, the court did seem to suggest individual employees should be given the same rights granted to employee organizations; to do so, however, would not only place an unreasonable burden upon public agencies, but would also conflict with the general purposes of the act.

Other than the specific criteria provided for peace officers, professionals, and firefighters, the only statutory standard governing the appropriateness of units is the vague standard of reasonableness. The Public Defenders decision indicated that case law under the NLRA is highly persuasive in reviewing the appropriateness of a bargaining unit under the MMB Act, and it is to be expected that courts in the future will continue to look to the NLRA experience for guidance in reviewing the appropriateness of a unit established by a public agency under the MMB Act.

While flexibility must be ensured, ad hoc judicial decisions are, at best, an undesirable method of fashioning a comprehensive set of rules to govern unit determinations and questions of representation in the rapidly developing and complex field of public employee labor relations. Courts are not equipped with sufficient resources nor is it their function to undertake what is essentially legislative action. There is an obvious need for the California legislature to act in this area.

In March of 1973 the Assembly Advisory Council on Public Employee Relations submitted to the California Assembly its report recommending repeal in their entirety of the Meyers-Milias-Brown Act, the George Brown Act, the Winton Act, and Labor Code sections 1960-63. In their place the council recommended enactment of a comprehensive and preemptive state law to govern public employee relations which would grant full collective bargaining rights to public employees. With respect to unit determinations, the council proposed the establish-
ment of a Public Employment Relations Board which would be empowered to make unit determinations, and further recommended general criteria to be applied by the board in making such determinations. It is to be hoped that in the near future the legislature will act upon these or similar recommendations.

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