



**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

PASADENA AREA COMMUNITY COLLEGE  
DISTRICT,

Employer,

and

CALIFORNIA FEDERATION OF TEACHERS,

Petitioner,

and

PASADENA CITY COLLEGE FACULTY  
ASSOCIATION,

Exclusive Representative.

Case No. LA-DP-463-E

PERB Order No. Ad-502

June 28, 2023

Appearances: Rothner, Segall & Greenstone by Glenn Rothner, Attorney, for California Federation of Teachers; Law Offices of David Conway by David Conway, Attorney, for Pasadena City College Faculty Association.

Before Banks, Chair; Krantz, and Nazarian, Members.

**DECISION**

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on an interlocutory appeal from an administrative determination (AD) concerning a decertification petition that California Federation of Teachers (CFT) filed under the Educational Employment Relations Act (EERA).<sup>1</sup> Through its petition, CFT seeks to decertify and replace Pasadena City College Faculty Association (PCCFA) as

---

<sup>1</sup> EERA is codified at Government Code section 3540 et seq.

the exclusive representative of a bargaining unit at Pasadena Area Community College District.

The unit in question includes all full-time and part-time credit and non-credit faculty, counselors, librarians, learning center coordinators, physicians, nurses, and psychiatrists. We follow the parties' practice by referring to these diverse titles as falling into one of two categories: full-time (also known as regular) faculty and part-time (also known as temporary or adjunct) faculty. Many part-time faculty work intermittently, meaning they may work some terms but not others. Some part-time faculty may work for the District for one term and never return.

CFT filed its petition on February 6, 2023.<sup>2</sup> At that point, PERB's Office of the General Counsel (OGC) began assessing whether CFT submitted adequate proof of support to trigger a decertification election. Meanwhile, later in February 2023, CFT and PCCFA submitted position statements outlining their views on which part-time faculty should be eligible to vote in any eventual election.

On April 10, 2023, OGC found that CFT had submitted adequate proof of support and that no contract bar or election bar was in effect.

On April 21, 2023, OGC issued an Order to Show Cause (OSC) tentatively concluding that faculty should be eligible to vote in the election if they worked during either the Fall 2022 or Spring 2023 terms. PCCFA opposed this tentative standard, arguing that it would enfranchise many part-time faculty who do not have a reasonable

---

<sup>2</sup> In July 2022, CFT had filed an earlier decertification petition concerning the same unit. The Board dismissed that petition for lack of adequate proof of support. (See *Pasadena Area Community College District* (2023) PERB Order No. Ad-500.)

expectation of future employment. The District also responded to the OSC, offering additional facts to facilitate OGC's determination but asserting that it was satisfied with the OSC's tentative standard. Given that the approach set forth in the OSC aligned with CFT's earlier position statement on voter eligibility, CFT did not respond to the OSC.

On May 12, 2023, OGC issued the AD that is the subject of this appeal. The AD adopted substantially the same standard as the one set forth in the OSC, concluding that "all Unit members employed during either the Fall 2022 or Spring 2023 semesters are eligible to vote in the upcoming election provided such employees were not formally terminated, failed to complete the probationary period, resigned, or retired during such period. Additionally, employees during Fall 2022 or Spring 2023 who were ill, temporarily laid off, and serving in the U.S. military, are eligible to vote."

PCCFA timely filed this interlocutory appeal challenging OGC's voter eligibility test. CFT then responded, urging the Board to affirm the AD. The District filed no response. On June 2, 2023, OGC certified PCCFA's appeal to the Board pursuant to PERB Regulation 32200.<sup>3</sup>

The parties agree that the election should not occur until Fall 2023. This agreement reflects that some academic employees might be less likely to vote in the summer, and it mooted any need to formally stay the election pending this decision.<sup>4</sup>

---

<sup>3</sup> PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

<sup>4</sup> It is sometimes feasible to hold an election even though there are disputes over voter eligibility, as parties can challenge disputed ballots, which can then be impounded and sealed, with challenges resolved after the fact only if they are potentially dispositive in number. Such a path would have been ill advised here because a large portion of the eligibility list is in dispute. Large-scale confusion over

Having reviewed the record and considered the parties' arguments, we partially sustain PCCFA's appeal and hold as follows:

- 1) Regular faculty are eligible to vote if they are employed in the voting unit on the last day of the payroll period that includes September 1, 2023 (or any substitute eligibility cutoff date that OGC may order, with or without the parties' agreement), and they are still employed when they cast their ballots. Regular faculty shall be permitted to vote even if, on the eligibility cutoff date and/or during the voting period, they are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, or in the military service of the United States.
- 2) Part-time faculty are eligible to vote if (a) their work on behalf of the District includes serving in a bargaining unit position during two or more of the last six instructional terms (Spring 2022, Summer 2022, Fall 2022, Spring 2023, Summer 2023, and Fall 2023), including at least one of the most recent three instructional terms (Spring 2023, Summer 2023, and Fall 2023); and (b) the District has not disciplined them for wrongdoing by terminating them or barring them from reemployment.

---

global issues (including voter eligibility or unit configuration) will tend to impair employee free choice. (*City of Bellflower* (2020) PERB Order No. Ad-480-M, p. 12, fn. 12.) In such circumstances, it is typically better to resolve the global issue(s) before holding an election. (*Ibid.*) Because there is such a significant dispute over which employees may vote, this appeal involves more than just the "mechanics" of an election as that term is used in PERB Regulation 32380, subdivision (a), and OGC correctly found that the dispute meets all criteria for an interlocutory appeal under PERB Regulation 32200.

- 3) OGC shall conduct the election by mail ballot and incorporate into a negotiated election agreement or directed election order the following directives. OGC shall initially send ballots by United States Mail to the District's last known home address for each bargaining unit employee who, based on District records, meets the above voting eligibility criteria. OGC shall direct the District to post the Notice of Election at all locations where it posts notices to bargaining unit employees and to circulate the Notice of Election by all electronic means the District uses to communicate with bargaining unit employees, such as electronic message, team messaging platform, intranet, or internet site. The Notice of Election shall include, among other instructions and information:
- (a) a description of the above voter eligibility criteria; and (b) instructions for employees to request provisional ballots if they claim to be eligible to vote but do not appear on the initial eligibility list, or duplicate ballots if they appear on the list but do not receive the ballot within a reasonable time after OGC's initial mailing.
- 4) To the extent disputes arise in applying the above voter eligibility criteria, each party shall have the right to challenge voter eligibility prior to the tally of ballots. (See PERB Reg. 32732.) Provisional ballots shall be deemed challenged except to the extent that all parties agree otherwise. OGC shall impound challenged ballots without opening them and shall resolve challenges only if there are sufficient challenges to potentially impact the outcome. If that is the case, OGC may choose to resolve all challenges, or a subset based on limited issues that may be sufficient to render the remainder non-determinative.

## BACKGROUND

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k), and a school district within the meaning of PERB Regulation 32001, subdivision (c). PCCFA and CFT are employee organizations within the meaning of EERA section 3540.1, subdivision (d) and PERB Regulation 32001, subdivision (a). At the time CFT filed its petition, the most recent collective bargaining agreement (CBA) between the District and PCCFA had expired.

Regular faculty, as defined under Education Code section 87601, subdivision (e), have either achieved tenure or are contract employees on a tenure track. Conversely, the District employs part-time faculty on a term-to-term basis at no more than 67 percent of a full-time equivalent. (Ed. Code, § 87482.5.) Part-time faculty have no assurance that they will be given an assignment for the following term (*id.*, § 87482.3, subd. (d)), but the Education Code sets minimum standards for reemployment priority and allows parties to agree on greater preferences via collective bargaining (*id.*, § 87482.3, subds. (a)-(c)). For part-time faculty at the District, the most salient CBA provision on this topic is Article 18.1(a), which generally affords reemployment priority to part-time faculty who have satisfactory performance evaluations and have worked at least six terms without a break in service of two or more consecutive years.

The District assigns work first to regular faculty, then to part-time faculty with a reemployment priority under CBA Article 18.1, and lastly to other part-time faculty (including applicants who have not previously worked for the District).

In the Spring 2022 term, the District had approximately 412 full-time faculty and 652 part-time faculty.

In the Summer 2022 term, the District had approximately 269 full-time faculty and 467 part-time faculty.

In the Fall 2022 term, the District had approximately 412 full-time faculty and 580 part-time faculty.

In the Spring 2023 term, the District had approximately 416 full-time faculty and 825 part-time faculty. Out of the part-time faculty employed that term, just over half (approximately 420) had a reemployment priority under CBA Article 18.1.

Although the number of part-time faculty employed increased substantially in Spring 2023, there were, nonetheless, approximately 111 part-time faculty from Fall 2022 who were not among the approximately 825 part-time faculty employed in Spring 2023. Out of these 111 employees, about half have reemployment priority under CBA Article 18.

The parties did not submit comparable data for instructional terms other than those noted above.

PCCFA predicts that part-time faculty who worked at the District in recent terms have bleak prospects for future employment at the District even if they have Article 18 reemployment priority, and even worse prospects if they lack such priority. PCCFA makes this prediction primarily based on its assertion that the District is hiring 58 new full-time faculty. PCCFA also claims that declining student enrollment from 2019 to 2022 imperils part-time faculty employment prospects, though it appears equally likely that such enrollment declines have already had their impact in recent years, which could make the future potentially stable, or could lead part-time faculty to have improved

employment prospects if enrollment rebounds. We further discuss PCCFA's predictions on page 12, *post*.

## DISCUSSION

PERB Regulation 32728, entitled Voter Eligibility, provides as follows: "Unless otherwise directed by the Board, to be eligible to vote in an election, employees must be employed in the voting unit as of the cutoff date for voter eligibility, and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots."

Thus, Regulation 32728 provides us with discretion to set a voter eligibility standard different from the default standard the regulation sets out. While we find no cause to do so for the District's regular faculty, we reach a different conclusion for the District's part-time faculty because they are intermittent employees.

### I. PERB's Approach to Determining Intermittent Employees' Voter Eligibility

In administering a decertification election involving a mixed bargaining unit of regular and intermittent employees, PERB must design a voter eligibility standard for intermittent employees that tends to enfranchise those with an "established interest" in employment relations with the employer based upon their having manifested a reasonable expectation of future employment. (*State of California (Department of Personnel Administration) and California Union of Safety Employees* (1992) PERB Decision No. 948-S, p. 6 (*DPA (Safety Employees)*.) In such cases, "no test is perfect." (*Ibid.*) This is true, in part, because it is administratively impractical to hold a



hearing and determine with precision each intermittent employee's objectively reasonable expectation of future employment. (*State of California (Department of Personnel Administration) and Association of Staff, Administrative and Financial Employees* (1985) PERB Decision No. 532-S, adopting dismissal at p. 10 (*DPA (Administrative Employees)*.) Instead, absent a reasonable stipulation by the parties resolving with sufficient clarity which intermittent employees can vote, PERB must establish a feasible, context-specific standard that reasonably relates to such employees' objective future expectation, while minimizing the extent to which the standard is overinclusive or underinclusive.

Such a feasible, context-specific voter eligibility test should be based on all relevant circumstances. For example, in a case involving summer lifeguards working for the State of California within a broad safety bargaining unit, PERB found that individual lifeguards were generally eligible to vote in a decertification election if they worked parts of two consecutive summers preceding the voter eligibility cut-off date and totaled at least 10 percent of an annualized, full-time number of hours in the 12 months preceding the voter eligibility cut-off date. (*DPA (Safety Employees)*, *supra*, PERB Decision No. 948-S, pp. 7-8 & adopting proposed decision at p. 59.) It therefore did not matter that lifeguards might not appear as state employees on the eligibility cut-off date, as that date might fall during a non-summer month.<sup>5</sup>

---

<sup>5</sup> By the same token, in the present case it is not dispositive whether part-time faculty are eligible for unemployment insurance during a term falling between their assignments.

In an earlier case involving a mixed unit of regular and intermittent State of California employees working in administrative and financial positions, the Board looked only at whether intermittent employees had worked at least 10 percent of full time in a year but did not seek to determine if they had worked in two distinct blocks of time. (*DPA (Administrative Employees)*, *supra*, PERB Decision No. 532-S, adopting dismissal at pp. 10-11.) This difference makes sense, because the administrative employees' work assignments had no set periodicity based on the calendar, unlike lifeguards who work in the summer or community college teachers who work in a set instructional term.

The Board similarly applies a simple 10-percent rule for mixed units that include regular teachers and intermittent substitute teachers. Specifically, substitutes have a sufficiently established interest to vote in a decertification election if they worked at least 10 percent of a full-time hours' allotment in either of the most recent two school years, which may include the current year depending on what month of the year PERB conducts its look-back.<sup>6</sup> (*Oakland*, *supra*, PERB Order No. Ad-172, p. 2.)

---

<sup>6</sup> The "established interest" standard does not control what positions PERB includes or excludes in a bargaining unit's initial composition, nor what positions PERB includes or excludes when resolving subsequent petitions seeking to alter unit composition. (*Poway Unified School District* (2015) PERB Decision No. 2441, p. 6 [rejecting the "established interest" standard as a basis for resolving bargaining unit composition and noting that because there is a "clear distinction between voter eligibility and unit membership eligibility," the Board "has consistently held that employees should be included in bargaining units regardless of how few hours they may work a year, while at the same time limiting who may vote in representation elections"]; *Oakland Unified School District* (1988) PERB Order No. Ad-172, pp. 4-5 (*Oakland*) [distinguishing unit composition precedent from voter eligibility precedent].) While the Board briefly deviated from this approach when it held that a mixed unit of full-time and part-time community college faculty should only include part-time faculty

These examples show that a context-specific voter eligibility test is typically backward-looking and that PERB prioritizes two or three types of criteria: a minimum quantity of past work (typically at least 10 percent of full time); recency (typically work in the prior 1-2 years); and, for positions with periodicity, PERB has discretion to require a second stint of employment to winnow out those for whom the past work was merely an isolated episode.

II. Devising an Appropriate Test for CFT's Decertification Petition at the District

As the above discussion illustrates, part-time faculty who work intermittently do not necessarily lose all EERA rights between their assignments. Indeed, any such claim would be inconsistent both with precedent on summer lifeguards and precedent on intermittent teachers. (See, e.g., *Pittsburg Unified School District* (2022) PERB Decision No. 2833, p. 8 [EERA's broad coverage includes temporary, part-time teachers who have taught one or more past adult school courses and may obtain another such assignment].)

Thus, there is no cause to limit voting rights to those part-time faculty working at the time a petition is filed. (*DPA (Safety Employees)*, *supra*, PERB Decision No. 948-S, pp. 7-8 & adopting proposed decision at p. 59; accord *DPA (Administrative Employees)*, *supra*, PERB Decision No. 532-S, pp. 4-5 & adopting dismissal at pp. 10-11.) Such an approach would be especially problematic if a petition were filed

---

who worked at least three out of the past six terms—thereby suggesting that positions could float in and out of a unit based on management's offers to individuals and their responses thereto—the Board soon overruled that mistaken unit composition rule by recognizing that all community college faculty positions may properly be placed in a unit. (*Hartnell Community College District* (1979) PERB Decision No. 81, pp. 6-7 [overruling prior precedent].)

during a summer term when assignments ebb. That possibility is easy to imagine given that June 30 is a common end date for CBAs.

Instead, we employ a look-back using criteria that tend, on average, to winnow out those lacking a reasonable expectation of future employment. No test will be perfect, and if a petition arises when employment patterns are shifting more than usual—as PCCFA alleges here—backward-looking data may be even less perfect. Nonetheless, backward-looking data is typically preferable to unreliable prognostication. While we do not rule out the possibility that PERB could ever consider projections akin to those the PCCFA makes here, in this case the allegedly predictive information PCCFA cites is far from clear and therefore poorly suited for its intended purpose.

Similarly, although CBA Article 18.1 provides a specific threshold at which part-time faculty obtain reemployment priority, the limited data before us does not indicate that holding such a priority is a required precondition to having a reasonable expectation of future employment. We therefore do not use the Article 18.1 threshold to determine voting eligibility, as it appears that doing so would disenfranchise too many voters who possess a reasonable expectation of future employment. Rather, as with summer lifeguards, the best available means of determining which part-time faculty have a reasonable expectation of future employment is to look at their quantity of past work, repetition of employment, and recency of employment.

Applying these principles, we review and adjust the voter eligibility test OGC adopted in the AD. First, the AD noted PERB’s 10-percent standard and reasonably concluded that an instructor would normally exceed that threshold by teaching a single

course in any year. Any part-time faculty meeting the standard we order today—two out of the previous six instructional terms, including one of the most recent three instructional terms—will also normally have worked at least 10 percent of full time.

The AD did not require repetition of employment. Instead, it afforded voting eligibility to slightly more than 400 full-time faculty and *all* part-time faculty who had taught at least a single course in *either* the Fall 2022 term or the Spring 2023 term. While we do not know how many of those part-time faculty will satisfy the test we adopt herein, we have considered two possibilities. If the number of eligible part-time voters falls precipitously from the level that the AD would have allowed, that would mean that many of the part-time faculty covered in the AD have only worked during one term over two full years, suggesting that the test we have devised is sensible. Alternatively, if most of the part-time faculty who could vote under the AD can also do so under today's decision, that will provide added confidence that those voting have worked more than one term in two years and are not merely ephemeral District employees. In other words, no matter which side of the line individual part-time faculty may fall, the test has a logic to it.

The AD did substantially value recency of employment, though its order would call for a Fall 2023 election while not giving part-time faculty credit for working in Summer 2023 or Fall 2023. We address that issue. Moreover, based on our decision to require repetition of employment due to the periodicity inherent in most part-time faculty work, we look back slightly longer than the AD.

Furthermore, we allow part-time faculty to meet the voter eligibility test, in whole or in part, via summer terms. Whereas the AD would leave out part-time instructors

who teach every summer, the standard we order today resolves such potential omissions.

Our order requires the District to perform extra work in creating a voter eligibility list. But the amount of work involved does not approach the amount of work that would be required to apply a standard based on hypothetical future shifts in employment patterns or based upon employee-by-employee qualifications and their related future employment prospects.

Our test, like the one suggested in the AD, uses a different methodology than OGC employed when it checked CFT's proof of support. Neither OGC nor the parties saw an issue with adopting a different methodology at the proof of support stage. Nor do we. OGC's approach at that stage was sufficient to effectuate EERA's purposes given that the proof of support check was merely to determine if there was sufficient interest to hold an election. To the extent *DPA (Administrative Employees)*, *supra*, PERB Decision No. 532-S can be read as requiring OGC to use the same methodology at the proof of support stage and the election stage, we overrule that interpretation.

For the foregoing reasons, OGC shall apply the following voter eligibility test and associated procedures in the upcoming decertification election.

- 1) Regular faculty are eligible to vote if they are employed in the voting unit on the last day of the payroll period that includes September 1, 2023 (or any substitute eligibility cutoff date that OGC may order, with or without the parties' agreement), and they are still employed when they cast their ballots. Regular faculty shall be permitted to vote even if, on the eligibility cutoff date and/or

during the voting period, they are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, or in the military service of the United States.

- 2) Part-time faculty are eligible to vote if (a) their work on behalf of the District includes serving in a bargaining unit position during two or more of the last six instructional terms (Spring 2022, Summer 2022, Fall 2022, Spring 2023, Summer 2023, and Fall 2023), including at least one of the most recent three instructional terms (Spring 2023, Summer 2023, and Fall 2023); and (b) the District has not disciplined them for wrongdoing by terminating them or barring them from reemployment.
- 3) OGC shall conduct the election by mail ballot and incorporate into a negotiated election agreement or directed election order the following directives. OGC shall initially send ballots by United States Mail to the District's last known home address for each bargaining unit employee who, based on District records, meets the above voting eligibility criteria. OGC shall direct the District to post the Notice of Election at all locations where it posts notices to bargaining unit employees and to circulate the Notice of Election by all electronic means the District uses to communicate with bargaining unit employees, such as electronic message, team messaging platform, intranet, or internet site. The Notice of Election shall include, among other instructions and information: (a) a description of the above voter eligibility criteria; and (b) instructions for employees to request provisional ballots if they claim to be eligible to vote but do not appear on the initial eligibility list, or duplicate ballots if they appear on

the list but do not receive the ballot within a reasonable time after OGC's initial mailing.

- 4) To the extent disputes arise in applying the above voter eligibility criteria, each party shall have the right to challenge voter eligibility prior to the tally of ballots. (See PERB Reg. 32732.) Provisional ballots shall be deemed challenged except to the extent that all parties agree otherwise. OGC shall impound challenged ballots without opening them and shall resolve challenges only if there are sufficient challenges to potentially impact the outcome. If that is the case, OGC may choose to resolve all challenges, or a subset based on limited issues that may be sufficient to render the remainder non-determinative.<sup>7</sup>

### ORDER

The interlocutory appeal in Case No. LA-DP-463-E that Pasadena Community College Faculty Association filed on May 19, 2023, challenging an Administrative Determination dated May 12, 2023, is SUSTAINED IN PART. In continuing to process the decertification petition that is currently pending in this case, the Office of the General Counsel shall do so in a manner consistent with this Order.

Chair Banks and Member Nazarian joined in this Decision.

---

<sup>7</sup> OGC should strive for efficiency in resolving challenges, as it does in compliance proceedings. (See, e.g., *Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 22 [discussing option to accept sworn declarations in lieu of convening a compliance hearing].)