

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



IN THE MATTER OF:)	
)	Case Nos. SF-PC-1001 et. al.
UNIT DETERMINATION FOR)	
PROFESSIONAL NON-ACADEMIC)	Requests for Reconsideration
SENATE INSTRUCTIONAL EMPLOYEES)	PERB Decision No. 270-H
{UNIT 18) OF THE)	
UNIVERSITY OF CALIFORNIA)	PERB Decision No. 270a-H
PURSUANT TO CHAPTER 744 OF)	
THE STATUTES OF 1978 (HIGHER)	October 24, 1933
EDUCATION EMPLOYER-EMPLOYEE)	
RELATIONS ACT))	
-----)	

Appearances; Robert J. Bezemek, Attorney (Bennett & Bezemek) for University Council, American Federation of Teachers; Glenn Rothner, Attorney (Reich, Adell & Crost) for American Federation of State, County and Municipal Employees, AFL/CIO; Douglas H. Barton, Kent Jonas and Susan C. Paulsen, Attorneys (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

Before: Tovar, Jaeger, Morgenstern and Burt, Members*

DECISION

In PERB Decision No. 270-H, issued on December 28, 1982, the Public Employment Relations Board (PERB or Board) created two separate bargaining units for non-academic senate professional employees of the University of California (UC) . These are the non-academic senate instructional unit (instructional unit) and the research and allied professionals unit (research unit). Thereafter the Board received requests

*Chairperson Gluck did not participate in this Decision.

for reconsideration regarding these units from the University of California; University Council, American Federation of Teachers (AFT); and American Federation of State, County and Municipal Employees. This decision concerns only that portion of the parties' requests for reconsideration which relates to the instructional unit.

PERB rule 32410(a)¹ pertains to reconsideration of Board decisions and states:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and 5 copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

Portions of the requests have merely repeated arguments previously raised and have failed to present any new legal or factual issues. Other portions of the requests have brought to the attention of the Board alleged errors or omissions from

¹PERB rules are codified at California Administrative Code, title 8, section 31001 et seq.

PERB Decision No. 270-H which merit additional clarification. Each request shall be addressed individually.

I. University of California; Request_for Reconsideration

A. Division of Employees into Instructional and Research Units

UC requests the Board to reconsider its decision to create two separate units of non-academic senate professional employees. UC argues that such a division not only ignores the manner in which the university's mission of teaching, research, and public service interconnect, but establishes an artificial distinction between employees which is injurious to the effective operation of the university.

UC's request for reconsideration on this issue is no more than a restatement of arguments it made in previous briefs. In PERB Decision No. 270-H, the Board thoroughly explained its rationale for finding an appropriate separate unit of instructional employees based upon a finding that they have separate and distinct communities of interest. There is no reason to reiterate that reasoning here. Absent new issues of fact or law, UC's request for reconsideration of this issue lacks "extraordinary circumstances" within the meaning of PERB rule 32410(a) and is therefore denied.

B. clinical and Adjunct Faculty/Instructional Unit

UC requests the Board to reconsider its decision refusing to place clinical and adjunct faculty in the instructional

unit. UC argues that these employees play an integral role in the university's teaching mission and share many key characteristics with other academic employees in the unit. UC's request is denied for failure to show extraordinary circumstances since no new issues of fact or law are raised.

C. Exclusion of University Extension Teachers/
Instructional Unit

UC requests reconsideration of the Board's refusal to place university extension teachers in the instructional unit. No new issues of fact or law are raised. The request is denied for failure to show extraordinary circumstances.

D. Request for Reconsideration of Unit Placement Errors

UC requests the Board to reconsider various alleged technical errors regarding the placement and/or omission of several title codes in the instructional unit. Among the errors that UC cites are: (1) failure to place nursery school teachers in the instructional unit; and (2) failure to place employees who oversee the university's field work education programs in the instructional unit.

Paragraph 4 of the Order in PERB Decision No. 270-H directs the parties to present all technical errors to the director of representation who shall take appropriate action thereon in accordance with that decision. Consistent with that paragraph, we refer the alleged technical errors to the director of representation for correction.

II. University Council, American Federation of Teachers;
Request for Reconsideration

A. Adjunct Lecturers/Instructional Unit

AFT requests that the Board correct any unit errors which resulted from an alleged improper reclassification of certain lecturers to adjunct lecturers by UC.

In PERB Decision No. 270-H, the Board excluded all adjunct lecturers, noting that the adjunct classifications are generally designed for faculty who teach on occasion, but whose primary position at the university is non-instructional. The adjunct designation only indicates that they may be involved for a time in classroom instruction. Consequently, their occupational community of interest lies not with employees in the instructional unit but with colleagues in their primary position.

AFT claims that certain individuals in the adjunct classifications have been improperly classified and in fact belong in lecturer classifications included in the unit. The AFT in its request for reconsideration states that, after the unit determination process began, UC reclassified many lecturer classifications to "adjunct" lecturer classifications. This action became the subject of an unfair practice charge. On December 2, 1982, the proposed decision was issued on that charge. See University Council, American Federation of Teachers (AFT), and AFT Local 2199 v. Regents of the University

of California (Proposed Decision) (12/2/82) Case No. SF-CE-57-H,
The hearing officer found that the action violated AFT's rights to meet and discuss the changes since the university failed to show AFT had clear and unequivocal notice of the policy change prior to its adoption. The proposed decision is now on appeal to the Board itself.

AFT claims that the confusion rendered by the university's reclassification scheme has led to errors in the unit determination. Specifically, AFT states that the "adjunct" classifications now consist of two types of employees. One type, properly excluded by the Board from the unit, are those adjunct lecturers who have another full-time university position. The other type, whom AFT claims should be included in the unit, are those former lecturers who do not have another full-time university position and were allegedly improperly reclassified as "adjunct."

AFT proposes that the Board remedy this problem by including several adjunct classifications in the instructional unit.² However, this unit determination decision is not the proper vehicle to remedy the alleged unfair practice. Before the Board's final decision in the unfair practice charge, it is

²These classifications are: adjunct lecturer - 9 months (1630), adjunct lecturer - 9 months - 1/9th (1632), adjunct lecturer - 11 months (1634), senior adjunct lecturer - 9 months (1640), senior adjunct lecturer - 9 months - 1/9th (1642), and senior adjunct lecturer - 11 months (1644).

premature to assume that certain adjunct lecturers have been improperly reclassified. The Board in this reconsideration may fashion appropriate units based only upon the record in the instant case. Accordingly, AFT's request for reconsideration is denied.

B. Exclusion of Acting Instructors/Instructional Unit

AFT, in its response to UC's request for reconsideration, raises a previously unargued request that the Board include the classifications of acting instructor (1401 and 1407) in the instructional unit.

This request is rejected for two reasons. First, because it is untimely. Second, because there is no showing that any employee organization ever sought to represent these employees. In sum, the decision as to whether acting instructors should be placed in the instructional unit is beyond the scope of this Decision.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

1. The University of California request for reconsideration of the creation of two separate units of non-academic senate professional employees is DENIED for failure to show "extraordinary circumstances" within the meaning of PERB rule 32410(a).

2. The University of California request for reconsideration of the exclusion of clinical and adjunct faculty from the instructional unit is DENIED for failure to show extraordinary circumstances.

3. The University of California request for reconsideration of the exclusion of university extension teachers from the instructional unit is DENIED for failure to show extraordinary circumstances.

4. The American Federation of Teachers request for reconsideration of the unit placement of lecturers who have allegedly been unlawfully reclassified to adjunct lecturers is DENIED for failure to show extraordinary circumstances.

5. The American Federation of Teachers request for reconsideration of the exclusion of acting instructors from the instructional unit is DENIED because it is untimely and there is no showing that any employee organization filed a petition to represent acting instructors.

6. Any technical errors in the Order of PERB Decision No. 270-H shall be presented to the director of representation who shall take appropriate action thereon in accordance with that decision.

7. Any technical errors in this Order shall be presented to the director of representation who shall take appropriate action thereon in accordance with this Decision.

By the BOARD