STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	
UNIT DETERMINATION FOR SKILLED CRAFTS EMPLOYEES OF THE UNIVERSITY OF CALIFORNIA PURSUANT TO CHAPTER 744 OF THE STATUTES OF 1978 (HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT)	Case Nos. SF-RR-1002 et al. Requests for Reconsideration and Judicial Review PERB Decision No. 242-H PERB Decision No. 242a-H February 4, 1983

Appearances; Judith Droz Keyes and Jerrold C. Schaefer, Attorneys (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California; Glenn Rothner, Attorney (Reich, Adell & Crost) for American Federation of State, County and Municipal Employees, AFL-CIO; Vincent A. Harrington, Jr., Attorney (Van Bourg, Allen, Weinberg & Roger) for International Union of Operating Engineers, Stationary Local No. 39, AFL-CIO; Thomas E. Rankin, Attorney for Laborers' Local 1276 and the Alameda County Building Trades Council, AFL-CIO; Philip E. Callis, Attorney for California State Employees Association; Marco Li Mandri for California Education Labor Organization.

Before Gluck, Chairperson; Tovar, Jaeger, Morgenstern and Burt, Members.

DECISION

Following the issuance of PERB Decision No. 242-H on September 30, 1982, the Public Employment Relations Board (PERB or Board) received several requests for reconsideration and a petition to join in request for judicial review of that decision.

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

> (a) 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.

The Board has considered all submitted requests for reconsideration. Some of the requests have merely repeated arguments previously raised and have failed to present any new legal or factual issues. Because the Board thoroughly considered those arguments before issuing PERB Decision No. 242-H, we are not now persuaded that they should again be open for discussion.

Other requests have brought to the attention of the Board certain technical errors. These errors include the omission from seven of the eight unit determination decisions of an

---

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

order concerning casual employees of the University of California (University). The Order in PERB Decision 242-H is hereby amended to read:

> 5. Each of the units found appropriate shall exclude managerial, supervisory, and confidential employees of the University. The status of casual employees shall be determined during the exclusionary phase of these proceedings.

In accordance with the Order in PERB Decision No. 242-H, the remaining technical errors shall be corrected by the director of representation.

One request for reconsideration raises an issue involving extraordinary circumstances which warrant reconsideration of PERB Decision NO. 242-H. Each request shall be addressed individually.

I. University of California; Request for Reconsideration and Petition to Join in Request for Judicial Review

A. Proof of Support

The University requests the Board to rule on whether the Higher Education Employer-Employee Relations Act (HEERA)[2] requires a 30 percent showing of support by at least one employee organization before an election in an appropriate unit may be held. Neither HEERA nor PERB rules specifically state what showing of support is required by a party to initiate an election

[2]HEERA is codified at Government Code section 3560 et seq. All statutory references are to the Government Code, unless otherwise specified.

in an appropriate unit. (See rules 512353 and 51300.[4])

The law governing elections, codified at section 3577[5] and in

---

[3]PERB rule 51235 provides:

> The Board shall serve on all interested parties pursuant to section 51020 a notice of decision with either the decision of the Board itself or a final hearing officer decision.

[4]PERB rule 51300 provides:

> Upon determination to conduct a representation election, other than an election directed by a Board decision, the Board shall issue a notice of intent to conduct election to all interested parties pursuant to Section 51020. A notice of decision pursuant to Section 51235 which orders a representation election shall serve as a notice of intent to conduct election.

[5]Section 3577 provides:

> (a) Upon receipt of a petition filed pursuant to Section 3575 the board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearings. If the board finds on the basis of the evidence that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 3574, it shall order that an election shall be conducted by secret ballot placing on the ballot all employee organizations evidencing support of at least 10 percent of the members of an appropriate unit, and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on the initial ballot the

PERB rule 51310,[6] specifies only that once an election is directed an employee organization with 10 percent support may appear on the ballot.

---

choice of 'no representation.' If, at any election, no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the petition, unless the petition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or

(2) Within the previous 12 months either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) of Section 3577 were cast for 'no representation.[1]

[6]PERB Rule 51310 provides:

(a) Within 15 workdays following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization, whether or not a party to the unit hearing, may file an intervention to appear on

The Board grants reconsideration based on extraordinary circumstances within the meaning of rule 32410(a). Because the showing of support issue is not expressly addressed by HEERA or by PERB rules, it should be addressed by the Board's decision directing elections.

The Board finds that a 30 percent showing of support is required by HEERA before a directed election may be held. This is the obvious Legislative intent underlying section 3573 et seq., which govern recognition and certification of employee organizations. See especially subsection 3575(c),[7] which

---

> ballot. The intervention shall be filed with the regional office on forms provided by the Board. The intervention shall be accompanied by proof of support of at least 10 percent of the employees in the appropriate unit. Proof of support is defined in Division 1, Section 32700 of these regulations.
>
> (b) Service of the intervention, exclusive of the proof of support, and proof of service pursuant to Section 32140 are required.

[7]Subsection 3575(c) states:

> A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by;
>
> . . . . . .
>
> (c) An employee organization wishing to be certified by the board as the exclusive

specifically requires that an employee organization wishing to be certified by the Board as an exclusive representative in an appropriate unit shall file a petition accompanied by proof of a 30 percent showing of interest. Where the Board after hearing or investigation has created units not initially the subject of a petition with at least 30 percent showing of support, such a showing should be required before an election is held.

Federal legislation, regulations and judicial precedents have long required a 30 percent showing of support before an election will be held. The purpose of the requirement is:

> To prevent [the Board's] process and the time and efforts of employees as well as employers from being dissipated and wasted by proceedings instituted by organization[s] that have little or no chance of being designated as the exclusive representatives by the employees. (NLRB v. J. I. Case Co. (9th Cir. 1953) 201 F.2d 597 [31 LRRM 2330, 2331].)

When construing HEERA, cognizance should be taken of federal precedents. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 611; Chaffey Joint Union High School District (3/26/82) PERB Decision No. 202.) Therefore, the Order in PERB Decision NO. 242-H is hereby amended to read:

> representative. Such petition for certification as the exclusive representative in an appropriate unit shall include proof of a 30 percent showing of interest designating the organization as the exclusive representative of the employees.

> The Board hereby ORDERS a representation election in each of these units in which an employee organization has demonstrated or demonstrates at least 30 percent showing of support not later than March 15, 1983. The director of representation may seek an extension of this deadline in one or more units from the Board for sufficient cause.

B. Interpretation of Government Code Subsection 3579(d)

The University requests the Board to reconsider its interpretation of subsection 3579(d).[8] In PERB Decision No. 242-H, we concluded "that a unit of skilled craft employees limited to those occupations traditionally identified with the construction and building trades would be appropriate within the meaning and direction of subsection 3579(d) . . . ." We further concluded that "the proposed units of skilled craft employees which would include occupations other than those found in the construction and building trades are also presumptively appropriate. Subsection 3579(d) does not preclude such units, since it only requires that they include

---

[8]Subsection 3579 (d) states:

> (d) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a single, separate unit of representation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers. The single unit of representation shall include not less than all skilled crafts employees at a campus or at a Lawrence Laboratory.

'not less than' all of the traditional classifications." These conclusions were based on the definition of "skilled crafts employees" found in HEERA.

The Board's reading of subsection 3579(d), which admittedly departs from the general current conception of the term "skilled crafts," properly detected the legislative intent to fashion a distinctive and limited definition in the interest of effectuating HEERA's purposes. If the Legislature intended to set forth a universal definition, it would not have been necessary for it to illustrate the term by specific examples limited to classifications which are functionally or historically interrelated.

Linotype operators and pressmen come to mind when the term "skilled crafts" is voiced, yet these occupations did not find their way into the list of exemplars. Glass blowers, upholsterers and bookbinders are skilled crafts, but are not included in the list. Who would readily think of them as sharing the community of interest, functional interrelationship or bargaining history which would make it appropriate to include them in representation units with carpenters, painters or electricians? Yet, if the Board were to accept the University's broad reading of the statute, we would be required to include all of these classifications in such units.

The fundamental oversight in the University's analysis is the failure to acknowledge that the term "skilled crafts" has,

over the years, taken on a generic connotation to include virtually any job which requires extensive training and experience, and possibly formal apprenticeship and even licensure—but that the Legislature has perceived no basis for requiring that a baker, considered a skilled craft by the NLRB, be placed in a bargaining unit with stonemasons, earthmover operators or sheet metal workers.

It is more reasonable to conclude that the Legislature, indisputably cognizant of historic industrial and trade configurations and representational patterns, instructed this Board that, of all the crafts which might conceivably be considered as skilled, only a certain specific, traditional grouping of skilled crafts is presumptively appropriate. The examples set forth in subsection 3579 (d) are not meant to be exclusive. The statute says "an appropriate unit shall include, but not necessarily be limited to employment categories such as carpenters, plumbers, electricians, painters and operating engineers." It was meant to point out to the Board that the "appropriate" grouping within the legislative contemplation consists of all those skilled trades which are a part of historical industrial and trade configurations related to the examples provided by the Legislature.

The Board is not persuaded that its interpretation of "skilled crafts employees" is incorrect. The request for reconsideration is, therefore, denied.

C. Petition to join in Request for Judicial Review

The University asks in the alternative that the Board join in a request for judicial review of its interpretation of subsection 3579(d). Requests for judicial review of unit determination decisions are governed by subsection 3564(a) which provides:

> No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.
>
> Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

The University claims the interpretation of subsection 3579 (d) is an issue of "special importance" because the Board's decision "is likely to cause substantial confusion, and to arise again in the context of determining other units for the many skilled crafts employees of the University who have not yet been unitted." This argument is unpersuasive. The Board's decision clearly sets forth its interpretation of subsection 3579 (d). It has expanded upon its rationale herein. There should be no confusion regarding the Board's interpretation, which is within the intent of section 3579 (d) .

The University also argues that, because its request concerns statutory interpretation, it presents an issue of "special importance." In support of its position the University cites Fairfield-Suisun Unified School District (6/18/80) PERB Order No. JR-8, and Livermore Valley Joint Unified School District (10/21/81) PERB Order No. JR-9.[9] In Fairfield-Suisun, the Board granted the request of the California School Employees Association that it join in seeking judicial review of the meaning of the "same employee organization" under the EERA. That decision was based on three grounds: one, the "significant and novel issue" raised in the case; two, the fact that the issue was likely to arise frequently; and three, the fact that the employee organization had no alternative method to obtain judicial review. These elements are not all present in this case.

In Livermore Valley, the Board declined to conclude the case was of "special importance" where the decision in question involved the "weighing and balancing of the multiplicity" of statutory factors in light of the facts presented. Such a ruling does not set a precedent for granting the petition to join in request for judicial review in this case.

---

[9]These cases were decided under the Educational Employment Relations Act (EERA), codified at Government Code section 3540 et seq. Nevertheless, both statutes' pertinent provisions are the same.

Furthermore, in San Diego Unified School District (10/27/81), PERB Order No. JR-10, the Board emphasized that:

> The Board's considerable discretion in the determination of appropriate units is demonstrated by the very limited circumstances under which judicial review of its unit decisions may be obtained. A claim of "special importance" is not sufficient. The Board must agree that such is the case. (P. 4.)

In the final analysis, The University's position reflects nothing more than disagreement with the Board's exercise of the discretion vested in it by the Legislature. Petitioner's request that the Board join in seeking judicial review is denied.

II. international Union of Operating Engineers, Local 39; Request for Reconsideration

Local 39's request for reconsideration of the Board's refusal to create separate units of stationary engineers at UC Berkeley, UC San Francisco and UC Davis is denied for failure to raise new issues of law or fact.

III. Laborers' Local 1276 and Alameda Building Trades Council, AFL-CIO; Request for Reconsideration

Laborers' Local 1276 and Alameda Building Trades Council, AFL-CIO request reconsideration of the Board's interpretation of subsection 3579 (d) in order to include machinists and metal fabricators and metal platers in a unit of skilled crafts employees at Lawrence Livermore National Laboratory, In PERB Decision No. 241-H, the Board determined that these employees should be placed in the technical unit (p. 14-15). Petitioners

raise no new issues of law or fact concerning that decision nor concerning the interpretation of subsection 3579 (d). Therefore, their request for reconsideration is denied.

IV. California Education Labor Organization; Request for Reconsideration

The California Education Labor Organization (CELO) requests the Board to reconsider the creation of systemwide units. However, CELO is not a party to this unit determination process. PERB rule 32410 states that requests for reconsideration may be raised by "Any party to a decision . . . ." (Emphasis added.) Failure to conform to this limitation would lead to inefficiency and potential misuse of the Board's administrative processes. For these reasons CELO's request for reconsideration is denied.

V. American Federation of State, County and Municipal Employees, AFL-CIO; Request for Reconsideration

The American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME) requests the Board to reconsider its refusal to create a residual crafts unit. In PERB Decision No. 242-H, the Board ordered the creation of skilled crafts units at the individual campuses of UCLA and UC San Francisco, and a combined unit at UC Berkeley/Lawrence Berkeley Laboratory. In that decision we considered and addressed the issues AFSCME again raises. Its request is therefore denied.

In the alternative, AFSCME asks the Board to order the creation of campus units for those skilled crafts employees not

placed in units by PERB Decision No. 242-H. Because the California State Employees Association (CSEA) filed a similar petition, these two requests are addressed together, infra.

VI. California State Employees Association; Request for Reconsideration

CSEA has asked the Board to amend the Order in PERB Decision NO. 242-H to include the creation of a residual skilled crafts unit for the Southern California campuses, except UCLA, and individual skilled crafts units at the Santa Cruz and Davis campuses. This request is denied for failure to raise new issues of law or fact.

In the alternative, CSEA, like AFSCME, asks the Board to create skilled crafts units at the campuses not enumerated in PERB Decision No. 242-H. In that decision the Board explained the rationale for finding appropriate individual campus units of skilled crafts workers. It is unnecessary to reiterate that reasoning here. The requests of CSEA and AFSCME for reconsideration of this issue are denied for failure to raise new issues of law or fact.

ORDER

In accordance with the foregoing discussion and in consideration of the entire record in this case, the Public Employment Relations Board hereby ORDERS that:

1. Paragraph 5 of the Order in PERB Decision 242-H is amended to read:

> Each of the units found appropriate shall exclude managerial, supervisory, and

> confidential employees of the University. The status of casual employees shall be determined during the exclusionary phase of these proceedings.

2. The remaining technical errors brought to the Board's attention shall be corrected by the director of representation, in accordance with the order in PERB Decision No. 242-H.

3. The final paragraph of the Order in PERB Decision No. 242-H is amended to read:

> The Board hereby ORDERS a representation election in each of these units in which an employee organization has demonstrated or demonstrates at least 30 percent showing of support not later than March 15, 1983. The director of representation may seek an extension of this deadline in one or more units from the Board for sufficient cause.

4. The request for reconsideration of subsection 3579(d) and petition to join in request for judicial review filed by the University of California are DENIED for failure to show "extraordinary circumstances" or "special importance" within the meaning of PERB rule 32410 and subsection 3564(a), respectively.

5. The request for reconsideration filed by the California Education Labor Organization is DENIED because the organization is not a party to this proceeding.

6. The remaining requests for reconsideration are DENIED for failure to show "extraordinary circumstances" within the meaning of rule 32410.

By the BOARD