

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of:)	
)	Case Nos. SF-PC-1001
UNIT DETERMINATION FOR PROFESSIONAL)	et al.
PATIENT CARE EMPLOYEES OF THE)	
UNIVERSITY OF CALIFORNIA PURSUANT TO)	PERB Decision No. 248-H
CHAPTER 744 OF STATUTES OF 1978)	
(HIGHER EDUCATION EMPLOYER-EMPLOYEE)	
RELATIONS ACT))	September 30, 1982

Appearances; (Petitioners, Requestors, and Interested Parties) Van Bourg, Allen, Weinberg and Roger, Attorneys for United Health Care Employees, SEIU, Locals 535 and 660; Duane Beeson, Attorney (Beeson, Tayer, Kovach and Silbert) and Kenneth Absalom for California Nurses Association; Hirsch Adell, Attorney (Reich, Adell and Crost) for American Federation of State, County and Municipal Employees, AFL-CIO; Douglas Barton, Kent Jonas and Terry Lewis, Attorneys (Corbett, Kane and Berk) and James N. Odle, Attorney, for the Regents of the University of California.

(Limited Party) Christine Bologna, Attorney for California State Employees Association.

Before Tovar, Jaeger, Morgenstern and Jensen, Members.*

DECISION

Under subsection 3563(a) of the Higher Education Employer-Employee Relations Act (HEERA or Act),¹ the Public Employment Relations Board (PERB or Board) is charged with the

*Chairperson Gluck did not participate in this decision.

¹HEERA is codified at Government Code section 3560 et seq. All statutory references are to the Government Code unless otherwise specified. Subsection 3563(a) provides:

This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties and responsibilities:

responsibility to determine appropriate units for representation. Pursuant to that responsibility, hearings have been held before administrative law judges of the Board regarding petitions filed and positions taken by various labor organizations as to appropriate groupings of employees. Administrative Law Judge Terry Filliman issued his recommendation to the Board regarding professional employees on February 2, 1982. That recommendation is incorporated by reference herein. Following issuance of that recommendation, the parties were invited to brief their positions thereon to the Board itself. After careful consideration of the record as a whole, including the pre- and post-recommendation briefs by the parties, the Board has determined that two units of professional patient care employees employed by the Regents of the University of California (University), one consisting of all registered nurses and another consisting of the residue of the professional patient care employees, constitute appropriate units for meeting and conferring within the meaning of the Act.

DISCUSSION

At issue herein is the unit placement of the approximately 5,200 to 6,000 professional patient care employees of the University. Four parties seek to represent those employees.

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- (a) To determine in disputed cases, or otherwise approve, appropriate units.

The American Federation of State, County and Municipal Employees (AFSCME) seeks to represent an overall unit of all professional employees, excluding those at Lawrence Livermore National Laboratory.

California State Employees Association (CSEA) initially sought a wall-to-wall professional employees unit. CSEA does not specifically modify this position vis-a-vis professional patient care employees by its exceptions brief. The only exceptions taken by CSEA regarding such employees go to whether licensed vocational nurses (8916-18) and psychiatric technicians (8925-26) are professional employees within the meaning of the Act. Thus, its post-administrative law judge (ALJ) recommendation position is susceptible of the interpretation that it supports these ALJ's professional patient care unit; however, CSEA does not affirmatively state this.

United Health Care Employees, Service Employees International Union, Locals 535 and 660 (SEIU) seeks two separate units of patient care professional employees, one composed exclusively of registered nurses and one consisting of the 1,200 to 2,000 incumbents of the remainder of classifications of patient care professionals.

California Nurses Association (CNA) seeks a unit of all registered nurses. Alternatively, CNA contends that either separate units of registered nurses by work location or a systemwide unit of registered nurses is appropriate.

The University supports the comprehensive patient care professionals unit recommended by the ALJ.

As indicated in our decision regarding professional librarians, we will not grant a wall-to-wall professional employees unit as sought by AFSCME and CSEA. Unit Determination for Professional Librarians of the University of California (9/30/82) PERB Decision No. 247-H.

Evaluation of the other competing positions of the parties requires us to determine whether the registered nurses unit is appropriate, whether the rest of the patient care professionals constitute an appropriate residual unit, or whether, due to the totality of statutory factors, such units are inappropriate and the only appropriate grouping is one of all professional patient care employees.

In making this determination, we are guided by the criteria of section 3579.²

2section 3579 provides, in pertinent part:

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which such employees belong to the same employee

Initially, we hold that only systemwide units of patient care professionals are appropriate. This is in keeping with

organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation

the presumption embodied in subsection 3579(c). Only CNA seeks smaller groupings of registered nurses, and the evidence and arguments presented urging facility-wide units are insufficient to rebut the presumption favoring systemwide units.³

Registered Nurses

Looking to the community of interest factors enumerated in the statute, it is clear that registered nurses share a strong internal and occupational community of interest. They perform patient care and closely related services toward the common goal of patient health. While this function is performed in concert with other patient care professionals, that interaction

of units among the employees of the employer.

(b) There shall be a presumption that professional employees and nonprofessional employees shall not be included in the same representation unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (a) establishes.

(c) There shall be a presumption that all employees within an occupational group or groups shall be included within a single representation unit. However, the presumption shall be rebutted if there is a preponderance of evidence that a single representation unit is inconsistent with the criteria set forth in subdivision (a) or the purposes of this chapter.

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³We note that CNA alternatively supports systemwide units of registered nurses.

does not, in itself, indicate a community of interest shared by all patient care professionals so strong as to render a discrete unit of registered nurses inappropriate. Registered nurses come into contact with a variety of other patient care professionals from time to time and to varying degrees. This contact is not so intense or of such duration as to link them inextricably with other patient care professionals. Rather, it is largely a function of the unique coordinative role which registered nurses play in patient care, a role which differentiates them from other patient care employees, who characteristically play an equally important but more specialized role in the course of patient treatment.

Registered nurses are subject to a comprehensive regulatory scheme governing their training and licensure. They are subject to a separate body of law, the Nursing Practice Act. Business and Professions Code, Section 2700 et seq. A separate Board of Registered Nursing administers the provisions of that Act. This unique, comprehensive regulatory scheme, governing the initial and continuing requirements for licensure and qualification to practice, differentiates registered nurses from the other patient care professionals at issue herein.

We note that, by law, nursing services in accredited hospitals and health care facilities must be under the direction of a registered nurse. California Administrative Code, title 22, division 5, section 70215. The record does not

indicate that all registered nurses systemwide have common reporting or supervision patterns, or that other patient care professionals systemwide report to or are supervised by different persons than are the registered nurses. However, the predominant pattern is that the majority of registered nurses report to a director of nursing or an associate director of nursing at a given facility, through the head nurse of the specific department in which they work. Generally, authority for hiring, firing, scheduling, and discipline of registered nurses is exercised by a separate administrative nursing structure in a given health care facility, through the director or associate director of nursing or the designee thereof.

As with administrative and supervisory patterns, the hours of work and other terms and conditions of patient care professionals do not neatly break down along lines of registered nurses versus other patient care professionals. However, the record reflects the predominant pattern that, while other patient care professionals generally work a regular day shift, registered nurses typically provide 24-hour coverage and thus are employed on a variety of shifts, day and night. Registered nurses generally are eligible for overtime pay, whereas most other patient care professionals are not. Registered nurses are generally hourly paid, whereas most other patient care professionals are salaried. Unique scheduling and transfer policies apply to registered nurses. They alone among

patient care professionals have arranged at certain facilities to work 12-hour shifts.

Because of the different factual patterns presented, we find no case law which is directly on point. However, we accord some weight to the fact that the National Labor Relations Board routinely grants separate units of registered nurses when requested, and that such units are therefore a common aspect of the pattern of representation in the private sector health care industry. See, for example, Newton-Wellesley Hospital (1980) 250 NLRB 409 [104 LRRM 1384] and cases cited therein. Further, in the only other institutional unit in which a separate registered nurse unit has been requested, we granted such a unit. Unit Determination for the State of California (11/7/79) PERB Decision No. 110-S.

A unit of registered nurses would contain approximately 4,000 of the approximately 5,200 patient care professionals, systemwide. It would not involve dividing a single class among two or more units.

Further, the record does not reflect that creation of such a sizeable unit, which would leave open the possibility of a total of perhaps three systemwide units of patient care professionals, would have an adverse effect upon efficient operations of the University. This unit would not deprive employees of the right to effective representation.

The University raises the specter of separate units of each patient care discipline should the Board create a separate unit of registered nurses. We agree that such a scenario would run afoul of the statutory proviso against undue unit proliferation. It does not follow that once registered nurses receive a separate unit, each classification must therefore receive its own. Statutory criteria militate against such unit proliferation, and we would not be disposed to grant such small unit fragments even if such were petitioned for.

In recognition of their internal and occupational community of interest and in consideration of a balancing of the other statutory criteria, we conclude that a separate unit of registered nurses is appropriate. Said unit shall consist of all registered nurses systemwide.

CSEA contends in its exceptions that licensed vocational nurses (LVN's) are professional employees. All other parties are in agreement as to their nonprofessional status. We find no indication in the record that LVN's meet the criteria set forth in subsection 3562(o) for professional employees. Rather, we shall place them in the patient care technical unit. See Unit Determination for Technical Employees of the University of California (9/30/82) PERB Decision No. 241-H. Residual Patient Care Professional Employees

Because we have dismissed AFSCME's "all professional employees" petition and granted the registered nurses unit, the

remaining request for professional patient care employees is SEIU's residual unit request.

We find that the employees in this requested unit share a common goal and perform functionally related patient care services. All possess advanced training and experience and/or education which enables them to provide specialized patient care. All work in medical settings, some performing "hands-on" patient care and others performing vital laboratory functions in furtherance of the common health care goal.

Having granted the requested unit of registered nurses, it is deemed appropriate to grant the requested residual unit. This unit, containing as it does the bulk of the remaining patient care professionals, will serve the statutory goal of avoiding impairment of the University's operational efficiency and avoid potential undue unit proliferation. It will further provide employees with their right to units in which they may be effectively represented.

SEIU initially did not seek to include pharmacist classifications in the residual unit. In their exceptions brief, they indicated that they would seek to represent them in the residual unit if the Board ordered their inclusion. The record reflects that pharmacists, like others sought in this unit, provide specialized professional health care services. Their work takes them into the clinics and hospitals to interact with other patient care professionals. It does not

appear that they would constitute an appropriate unit by themselves. Thus, because the record reflects that they share an internal and occupational community of interest with other patient care professionals, we shall order their inclusion in the residual patient care professional unit.

Physicians

No labor organization sought to represent physicians in a professional patient care unit. SEIU strenuously objects to their inclusion on community of interest grounds. The University contends that they should be included. Because no labor organization sought to represent them in the course of this proceeding and because the record and precedent supports the appropriateness of a separate physicians unit, we shall leave them ununited for the present. See Unit Determination for Employees of the California State University and Colleges (HEERA) (Professional) (9/22/81) PERB Decision No. 173-H.

The record reflects that the various classes of doctors on the University's payroll have licensure and regulatory requirements which differentiate them from other professional patient care employees. They are far more independent than any other health care employees, setting their own day-to-day working conditions to a far greater extent. Due to their special role in health care, they perform quasi-supervisory functions, directing the work of other patient care professionals. In recognition of the above community of

interest factors, PERB has granted physicians separate units in other institutional settings. See Unit Determination for the State of California, supra; Unit Determination for Employees of the California State University and Colleges, supra. Thus, failing to unit these employees now will not prevent them from exercising their right to remain unrepresented or to effectively seek exclusive representation should they desire to do so in the future.

The University contends that hospital laboratory technicians are professional employees. For the reasons set forth in Unit Determination for Technical Employees of the University of California, supra, we find them to be nonprofessional employees and accordingly place them in the technical patient care unit.

CSEA contends that psychiatric technicians are professional employees. As with licensed vocational nurses, we find insufficient support in the record for the proposition that they possess the indicia of professional status set forth in subsection 3562(o). Thus, we shall place them in the patient care and technical unit.

ORDER

Based upon the entire record in this case, the Public Employment Relations Board hereby ORDERS that:

1. A unit of all registered nurses employed by the Regents of the University of California, as listed in

Appendix A attached hereto, is an appropriate unit for meeting and conferring within the meaning of the Act;

2. A unit of all other professional patient care employees, excluding physicians, employed by the Regents of the University of California, as listed in Appendix B attached hereto, is an appropriate unit for meeting and conferring within the meaning of the Act;

3. Each of the units found appropriate shall exclude managerial, supervisory, and confidential employees of the Regents of the University of California;

4. Any technical errors in this ORDER shall be presented to the director of representation who shall take appropriate action thereon in accord with this decision;

5. The Board hereby ORDERS a representation election in each of these units, and the general counsel is hereby directed to proceed in accordance with California Administrative Code, title 8, part 3, division 4.

By the BOARD

Member Jaeger, concurring and dissenting: I concur with the majority opinion, except that, for the reasons expressed in the administrative law judge's recommendation, I would find that a separate unit of registered nurses is inappropriate.

APPENDIX A

Registered Nurses

a) Lawrence Berkeley Lab

732.1 Occupational Health Nurse I
732.2 Occupational Health Nurse II
742.1 Nurse

b) University

9119 Special Duty Nurse
9133 Administrative Nurse II
9134 Administrative Nurse I
9136 Clinical Nurse V
9137 Clinical Nurse IV
9138 Clinical Nurse III
9139 Clinical Nurse II
9140 Clinical Nurse I
9143 Senior Nurse Anesthetist
9144 Nurse Anesthetist
9146 Nurse Practitioner III
9147 Nurse Practitioner II
9148 Nurse Practitioner I

APPENDIX B

Residual Patient Care Professional Unit

a) Lawrence Berkeley Lab

731.1 Medical Lab Technologist I
731.2 Medical Lab Technologist II
743.1 Research Clinical Lab Technologist

b) University

5412 Senior Dietitian
5413 Dietitian
8938 Senior Clinical Lab Technologist Specialist
8939 Clinical Lab Technologist Specialist
8940 Clinical Lab Technologist
8950 Consulting Toxicologist
8957 Clinical laboratory Technologist Apprentice
8958 Blood Bank Trainee
8982 Senior Orthopedist
8983 Orthopedist
9233 Pharmacist - Abolished
9240 Hospital Radiation Physicist
9241 Assistant Hospital Radiation Physicist
9244 Assistant Chief, Pharmaceutical Services
9245 Pharmacist Specialist
9246 Senior Pharmacist
9247 Staff Pharmacist II
9248 Staff Pharmacist I
9313 Clinical Social Worker III
9314 Clinical Social Worker II
9315 Clinical Social Worker I
9341 Social Worker Associate
9342 Assistant Social Worker Associate
9382 Psychologist III
9383 Psychologist II
9384 Psychologist I
9392 Senior Psychometrist
9393 Psychometrist
9449 Associate Chief of Rehabilitation Services
9451 Music Therapist
9458 Athletic Trainer
9462 Senior Physical Therapist
9463 Physical Therapist
9464 Special Duty Physical Therapist
9466 Recreation Therapist

APPENDIX B (Con't)

9472	Senior Speech Pathologist
9473	Speech Pathologist
9474	Senior Audiologist
9475	Audiologist
9477	Reading Therapist
9493	Senior Occupational Therapist
9494	Occupational Therapist