

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOSPITAL AND HEALTH CARE WORKERS,
LOCAL 250, SEIU, AFL-CIO,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

Case No. SF-CE-311-H

PERB Decision No. 1039-H

March 8, 1994

HOSPITAL AND HEALTH CARE WORKERS,
LOCAL 250, SEIU, AFL-CIO,

Petitioner,

and

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Employer.

Case No. SF-PC-1049-H

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Hospital and Health Care Workers, Local 250, SEIU, AFL-CIO; Hanson, Bridgett, Marcus, Valahos & Rudy by Douglas H. Barton, Attorney, for Regents of the University of California.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Regents of the University of California (UC) and the Hospital and Health Care Workers, Local 250, SEIU, AFL-CIO (Local 250) to a PERB administrative law judge's (ALJ) proposed decision. In the decision, the ALJ denied Local 250's request for a single bargaining unit of employees at the Mt. Zion Hospital and Medical

Center (Mt. Zion) of UC San Francisco (UCSF). The ALJ did find that a separate unit of pharmacists at Mt. Zion would constitute an appropriate bargaining unit.

The Board has reviewed the entire record in this case, including the proposed decision, transcripts, exhibits and exceptions and heard oral argument by the parties.¹ We affirm in part and reverse in part the ALJ's proposed decision for the reasons set forth below.

PROCEDURAL BACKGROUND

On July 9, 1990, Local 250 filed a representation petition under the Higher Education Employer-Employee Relations Act (HEERA)² requesting recognition of a bargaining unit described as approximately 200 employees in 51 job classifications at Mt. Zion. UC opposed the petition and PERB found proof of support inadequate. On March 19, 1991, Local 250 filed a second representation petition seeking certification which was found by PERB to have adequate support.

On July 18, 1990, Local 250 filed an unfair practice charge alleging the violation of HEERA section 3571(a), (b), (c) and (d).³ The PERB general counsel issued a complaint alleging:

¹Member Caffrey was substituted on the panel. He was present during the oral argument and had benefit of all transcripts of the proceedings.

²HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

³HEERA section 3571 states, in pertinent part:

It shall be unlawful for the higher education

(1) UC was a successor employer of Mt. Zion employees and UC's refusal to recognize the union violated HEERA section 3571(c); (2) UC's assignment of Mt. Zion employees to three systemwide bargaining units (clerical and allied, service and patient care technical) provided unlawful assistance and support to the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) in violation of HEERA section 3571(d); and (3) UC's conduct independently violated HEERA section 3571(a) and (b).

After UC answered, and settlement conferences failed, by mutual consent of the parties, the matters were consolidated for

employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

a hearing which was held during April and June 1991. Matters were submitted for decision on December 2, 1991, and the PERB ALJ's proposed decision was rendered on October 6, 1992.

The ALJ found the unit requested by Local 250 to be inappropriate under HEERA section 3579⁴ and dismissed the

⁴HEERA section 3579 states, 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 the employees belong to the same employee organization, the extent to which 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 factors such 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

petition in part. The ALJ granted the petition with respect to a separate unit consisting of two pharmacist classes at Mt. Zion,

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 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 with the purposes of this chapter.

(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.

finding that they would constitute an appropriate unit for the purposes of HEERA. The unfair practice charge filed by Local 250 was dismissed.

RELEVANT FACTUAL SUMMARY

A brief review of the relevant facts in this case is necessary to focus on the primary issues raised. UCSF purchased Mt. Zion on July 1, 1990, after extensive negotiations which began in 1988. The development of the UCSF facilities are briefly traced. UCSF has a long history which, for our purposes, began in 1955 with the opening of Moffett Hospital (Moffett), the Ambulatory Care Center in 1972, and Long Hospital (Long) in 1983. Langley-Porter Psychiatric Hospital (Langley-Porter) was added in 1973. Moffett, Long, the Ambulatory Care Center and Langley-Porter are adjacent to each other in Parnassas Heights in San Francisco. Other facilities located away from the UCSF campus include the Mission Center Facility, which houses financial planning and marketing activity as well as computer and data processing systems; Oyster Point, which has laundry facilities; Children's Hospital in San Francisco; and outpatient services in Daly City and Santa Rosa. Various other facilities that support UCSF are located in San Francisco. UCSF had a cooperative relationship with Mt. Zion and rotated students through the hospital as part of their resident program. Mt. Zion is located approximately a mile and a half from the Moffett and Long locations.

Offers of employment were sent by UC to all Mt. Zion

employees in May 1990, prior to transfer of the facility to UC ownership in July. The offers of employment advised employees that there would be no loss of wages, seniority or benefits, and where wage rates were in excess of UC rates, employees would be "red circled" and not suffer a pay reduction. In addition, employees were advised that UC policies, practices and labor contracts relating to employee compensation, classification and conditions of employment would govern. Employees were informed that, as UC employees, they would be represented by AFSCME, the exclusive representative for the applicable bargaining units. By July 1, 1990, approximately 1,400 Mt. Zion employees had signed and returned their job offers indicating they accepted UC employment under the terms and conditions of employment stated in the May 1990 offer.

UCSF has made a determined effort to integrate Mt. Zion into the UCSF system since its acquisition. Mt. Zion has been integrated into the system in the areas of contract and marketing, finance and budget, personnel and labor relations, information systems, pharmaceutical services, material and support services, and nursing. There is nothing in the record to indicate that the goal of establishing standards of care at Mt. Zion, consistent with the other facilities within the San Francisco system, has not been achieved. We find that Mt. Zion has become an integral part of the UCSF Medical Center (UCSFMC).

ALJ'S PROPOSED DECISION

The ALJ stated the issues in this case as follows:

- (1) Whether Local 250 has petitioned for an appropriate unit?
- (2) Is the University a successor employer to any of the former Mt. Zion employees?

At the outset the ALJ concluded that the successor-accretion principles of labor established as precedents by the National Labor Relations Board (NLRB) under the National Labor Relations Act (NLRA) and sanctioned by the Supreme Court⁵ are, as a matter of public policy, applicable to the facts in this case because HEERA is a collective bargaining statute. HEERA is silent with respect to PERB's authority to enforce a preexisting labor relationship upon a public educational institution which purchases a private business. However, the ALJ noted that the Legislature has specifically provided for such authority in another situation.⁶

⁵NLRB v. Burns Security Services (1972) 406 U.S. 272 [32 L.Ed.2d 61]; Howard Johnson Co. v. Hotel Employees (1974) 417 U.S. 249 [41 L.Ed.2d 46]; Fall River Dyeing & Finishing Corp. v. NLRB (1987) 482 U.S. 27 [96 L.Ed.2d 22].

⁶Section 30753 of the Public Utilities Code adopted in 1964 (added by Stats. 1964, 1st Ex.Sess., c. 62, p. 277, sec. 1) states:

- (a) Whenever the district acquires existing facilities from a publicly or privately owned public utility, either in proceedings in eminent domain or otherwise, the district shall assume and observe all existing labor contracts, and to the extent necessary for operation of facilities acquired, all of the employees of such acquired public utility

The purpose of successorship is to require a successor employer to bargain in good faith with the labor organization that represented its predecessors work force where a majority of the work force becomes a part of the successor entity and retains substantially its identity and it remains an appropriate unit under the applicable law. The ALJ reasoned that the criteria established under HEERA section 3579 precludes such a result.

Here, Local 250 seeks to represent a single employee unit with three separate bargaining histories and 51 separate job classifications. Since July 1, 1990, these employees have been added to and integrated into the existing UC bargaining structure which was established by PERB in 1982.⁷ At that time, applying

whose duties pertain to the facilities acquired, shall be appointed to comparable positions in the district without examination, subject to all the rights and benefits of this part, and these employees shall be given sick leave, seniority, pension and vacation credits in accordance with the records and labor agreements of the acquired public utility.

(b) Members and beneficiaries of any pension or retirement system or other benefits established by that public utility shall continue to have the rights, privileges, benefits, obligations and status with respect to such established system. No employee of any acquired public utility shall suffer any worsening of his wages, seniority, pension, vacation or other benefits by reason of the acquisition.

⁷Unit Determination for Employees of the University of California (1982 and 1983) PERB Decision Nos. 241-H, 241a-H, 241b-H, 241C-H (technical); 244-H, 244a-H, 244b-H (clerical); 245-H, 245a-H, 245b-H, 245C-H, 245d-H (service); and 248-H, 248a-H, 248b-H (professional patient care).

HEERA section 3579, which includes some 25 separate criteria, PERB established a number of systemwide units of clerical, service and patient care technical employees. Those units are currently represented by AFSCME. PERB also established a systemwide residual unit of patient care professionals which includes pharmacists. This unit is currently unrepresented. In Unit Determination for Technical Employees of the University of California (1982) PERB Decision No. 241-H, Local 250 was instrumental in convincing PERB to establish a patient care technical unit separate from the systemwide technical unit at UC. In granting the petition in that case, PERB stated:

Employees in this unit are primarily technicians involved in providing health services to patients at the University's medical centers, student health facilities, and hospitals. These employees are directly concerned with the delivery of health care services, and thus perform tasks not directly related to the University's basic educational mission. Hence, these employees share an internal community of interest which separates them from technical employees in other units we have created. In addition, we include in the patient care technical unit those classifications of hospital clerical and service employees who have direct contact with patients and work closely with, or are under supervision of, patient care technical or professional employees. [Pp. 11-12.]

In the instant case, the ALJ correctly stated:

Bargaining units created by the Board, after it applies the statutory criteria, have a presumptive validity, and there is a rebuttable presumption favoring those units. A petitioner seeking to alter the existing bargaining unit structure must show that the proposed unit is more appropriate than the Board-established units by producing sufficient evidence to overcome the

presumption. Absent an adequate evidentiary-
showing which rebuts the presumption, the
existing units must be maintained. (State
of California (Department of Personnel
Administration (1990) PERB Decision
No. 794-S.) [Pp. 68-69; original emphasis.]

The ALJ found that the record does not contain sufficient evidence to rebut this presumption. Accordingly, the ALJ determined that: (1) In seeking to represent pharmacists and employees in clerical, service and patient care technical classes in a single unit, Local 250's petition splits occupational classes which is contrary to HEERA section 3579(e). These same classes are not only used at UCSFMC, but also at UCSF worksites, four UC medical centers, and at the four remaining campuses. (2) The petition violates HEERA section 3579(b) presumptions against combining professional and nonprofessional employees in the same bargaining unit by including the pharmacists. No evidence demonstrates a community of interest between pharmacists and professional employees, with the remaining nonprofessional Mt. Zion employees who were represented in separate bargaining units under separate contracts. Accordingly, the ALJ denied Local 250's request for a single unit of employees at Mt. Zion. The ALJ did find, however, that a separate unit of pharmacists at Mt. Zion would constitute an appropriate unit for the purposes of HEERA.

EXCEPTIONS TO THE PROPOSED DECISION

Both parties filed numerous exceptions to the proposed decision, with Local 250 contesting the decision as to a unit of approximately 200 employees and UC contesting the decision

as to the separate unit of pharmacists.

UC argues that the ALJ failed to recognize the extent of the transformation of the old Mt. Zion pharmaceutical services once it was purchased by UC. Additionally, UC argues that the ALJ failed to appropriately apply HEERA unit determination criteria when she recommended a unit consisting of two classes of pharmacists at Mt. Zion. Specifically, UC contends that the ALJ failed to recognize PERB's 1982 rejection of a separate pharmacist unit at UC; failed to recognize the adverse effect on the efficient operations of UC; placed too much weight on the bargaining history at Mt. Zion; and failed to give appropriate weight to the systemwide presumption against splitting employees within an occupational group. Finally, UC argues that the ALJ inappropriately considered authority under the NLRA in interpreting HEERA in spite of the fact that the NLRA unit determination criteria differs substantially from those of HEERA.

Local 250 argues that maintaining a separate unit of pharmacists is in keeping with the purpose of HEERA section 3561⁸

⁸HEERA section 3561 states:

(a) It is the further purpose of this chapter to provide orderly and clearly defined procedures for meeting and conferring and the resolution of impasses, and to define and prohibit certain practices which are inimical to the public interest.

(b) The Legislature recognizes that joint decisionmaking and consultation between administration and faculty or academic employees is the long-accepted manner of governing institutions of higher learning and is essential to the performance of the

to develop harmonious and cooperative labor relations. Local 250 explains that interfering with historically established bargaining rights is "inimical to harmonious, cooperative and orderly labor relations." Local 250 argues that, because PERB case law adheres to the successor employer doctrine of the NLRA, the units in place at Mt. Zion at the time of the purchase should have been retained, regardless of the traditional UC bargaining units. Local 250 further supports its position by arguing that Mt. Zion continues to be operated in substantially the same

educational missions of these institutions, and declares that it is the purpose of this chapter to both preserve and encourage that process. Nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of the faculty in any shared governance mechanisms or practices, including the Academic Senate of the University of California and the divisions thereof, the Academic Senates of the California State University, and other faculty councils, with respect to policies on academic and professional matters affecting the California State University, the University of California, or Hastings College of the Law. The principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved.

(c) It is the policy of the State of California to encourage the pursuit of excellence in teaching, research, and learning through the free exchange of ideas among the faculty, students, and staff of the University of California, Hastings College of the Law, and the California State University. All parties subject to this chapter shall respect and endeavor to preserve academic freedom in the University of California, Hastings College of the Law, and the California State University.

manner it was operated prior to UC's purchase. Although Local 250 would prefer to represent pharmacists as part of an overall unit, it expressed willingness to proceed to an election for pharmacists. Finally, Local 250 argues that the pharmacists have a right to representation and that placing them in a statewide unrepresented unit would make representation virtually impossible.

DISCUSSION

The failure to rebut the presumptive validity of established units and the specific criteria of HEERA section 3579 renders the Local 250 proposed unit inappropriate irrespective of the NLRB's established successorship/accretion doctrine.

However, assuming *arguendo* that it does apply, this is clearly a case of accretion and, thus, UC is not obligated to recognize the bargaining units in place prior to its acquisition of Mt. Zion. In Lammert Industries v. NLRB (1978) 578 F.2d 1223 [98 LRRM 2992, 2994], the court stated:

In determining whether certain employees constitute an accretion, the Board [NLRB] compares them to the employees in the larger unit and examines such factors as similarity of working conditions, job classifications, skills and functions, similarity of products, interchangeability of employees, geographical proximity, and centralization of managerial control.

All of these factors are present here. The number of Mt. Zion employees is a small percentage of the total number of employees in each of the bargaining units to which they have been assigned by UC. Mt. Zion is located near the Moffett and Long hospitals.

The personnel department, as well as all other aspects of administration and supervision, are now centralized. Since all of the UCSF medical centers are organized and operated to provide acute medical care, working skills are interchangeable. The record is replete with testimony that employees have not changed their working conditions substantially during the integration.

We agree, therefore, with the ALJ's conclusion that if the accretion principles are applied to the facts in this case, the result must be the integration of the Mt. Zion employees into the existing units.

MT. ZION PHARMACISTS

The ALJ reached a different result as to the two classes of Mt. Zion pharmacists. Beginning approximately 18 years before UC's purchase of Mt. Zion, pharmacists were represented by Local 250 after an election. Consequently, the ALJ concluded that they should be recognized by UC as a separate unit. The ALJ noted that a unit of Mt. Zion pharmacists would comply with the professional-only presumption of HEERA section 3579(b), but would run counter to the section 3579(c) presumption that all employees within an occupational group should be in a single unit. The ALJ found the presumption rebutted, however, by the purpose of HEERA as a collective bargaining statute.

The record indicates that the 13 pharmacists in the two classes at Mt. Zion represent 14 percent of the 89 pharmacists employed at the UCSF campus and less than 5 percent of the total number of pharmacists employed by the UC system. In the

Unit Determination for Professional Patient Care Employees of the University of California (1982) PERB Decision No. 248-H, the Board rejected a request for inclusion of pharmacist classifications in a single unit in the following statement:

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. [Pp. 11-12.]

As previously noted, a very strong presumption arises from approval of an appropriate unit by PERB.⁹ The ALJ reasoned that the presumption was overcome by 18 years in the private sector and then being forced to join a unit by accretion which was unrepresented. She stated that the possibility of obtaining representation in the future would be unlikely because the 13 pharmacists would join a unit of over 1,500 unrepresented professionals. We find no authority for the proposition that bargaining rights obtained in the private sector outweigh the specific criteria in HEERA for determining an appropriate unit.

⁹State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S.

HEERA section 3579(a)(5) states a major consideration in determining an appropriate unit:

(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:

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

Allowing a small unit of represented pharmacists and leaving an overwhelming majority of the remaining pharmacists in a separate, unrepresented unit is precisely the problem HEERA section 3579 (a) (5) is intended to prevent.¹⁰

We do not agree that this preexisting labor relationship outweighs the specific language of HEERA or overcomes the presumption of appropriateness of PERB-established units. We therefore reverse that portion of the ALJ's decision that found a separate unit of pharmacists at Mt. Zion to be appropriate.

UNFAIR PRACTICE CHARGE

Local 250's unfair practice charge alleges that UC's assignment of Mt. Zion employees to three systemwide bargaining units (clerical and allied, service and patient care technical) provided unlawful assistance and support to AFSCME in violation

¹⁰Labor Relations Manager Gayle Cieszkiewicz testified about her extensive experience in university labor relations and collective bargaining. In her experience, the terms and conditions of employment in units represented by different unions never wound up to be the same. Unions do not present the same bargaining proposals for different units. (R.T. IV, p. 114.)

of HEERA section 3571 (d).¹¹ The ALJ concluded that the evidence in the record shows no employer campaign to aid AFSCME in seeking representation of the added units, nor does it show that AFSCME violated Article XX of the AFL-CIO constitution, and therefore the ALJ dismissed the charge. We concur.

The representation petition and the unfair practice charge are hereby dismissed.

ORDER

Based on the foregoing and the entire record in this case, it is ordered that the petition for certification filed in Case No. SF-PC-1049-H and the unfair practice charge in Case No. SF-CE-311-H are hereby DISMISSED.

Members Caffrey and Carlyle joined in this Decision.

¹¹Ante. footnote 2.