*** * * JUDICIAL APPEAL PENDING * * ***

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA NURSES ASSOCIATION, Charging Party, v. COUNTY OF SANTA CLARA, Respondent.	Case No. SF-CE-1648-M PERB Decision No. 2670-M September 20, 2019
REGISTERED NURSES PROFESSIONAL ASSOCIATION, Joined Party.	
COUNTY EMPLOYEES MANAGEMENT ASSOCIATION, Joined Party.	

Appearances: Nicole J. Daro and Kyrsten B. Skogstad, Legal Counsel, for California Nurses Association; Douglas M. Press, Assistant County Counsel, and Meyers, Nave, Riback, Silver & Wilson by Gina M. Roccanova, Attorney, for County of Santa Clara; Weinberg, Roger & Rosenfeld by Manuel A. Boigues, Attorney, for Registered Nurses Professional Association; Operating Engineers Local Union No. 3 by Gening Liao, Attorney, for County Employees Management Association.

Before Shiners, Krantz, and Paulson, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) for a decision on the evidentiary record from an expedited hearing. It arises out of the County of Santa Clara's (County) purchase of two acute care hospitals, O'Connor Hospital (OCH) and St. Louise Regional Hospital (SLRH), from a private entity, Verity Health Systems (Verity), in a bankruptcy sale. In anticipation of the transfer of ownership, the County offered Staff Nurses and Case Managers employed by Verity—who were then represented by

the California Nurses Association (CNA)—the opportunity to continue working at OCH and SLRH by inviting them to apply for provisional employment in the existing County job classifications of Clinical Nurse and Patient Services Care Coordinator, respectively. The County had previously allocated these two classifications to existing bargaining units: the Clinical Nurses to a unit represented by Registered Nurses Professional Association (RNPA), and the Patient Services Care Coordinators to a unit represented by County Employees Management Association (CEMA). Under the County's plan, any Verity employees who accepted the County's employment offer would be placed in one of the two existing units, and would be subject to the terms and conditions of employment contained in the current Memoranda of Agreement (MOA) between the County and RNPA (Clinical Nurses), or the County and CEMA (Patient Services Care Coordinators).

The central issue in this case is whether CNA remained the exclusive representative of the former Verity nurses and case managers at OCH and SLRH after the hospitals transferred to County ownership. For the reasons explained below, we conclude that the County was not required to recognize and bargain with CNA as the exclusive representative of Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH. We also conclude that CNA failed to prove the County violated its local employee relations rules by placing the former Verity nurses and case managers in the bargaining units represented by RNPA and CEMA, respectively. We accordingly dismiss the complaint and underlying unfair practice charge, and deny CNA's pending request for injunctive relief.

FINDINGS OF FACT

The Parties

The County is a "public agency" within the meaning of Section 3501, subdivision (c), of the Meyers-Milias-Brown Act (MMBA) and PERB Regulation 32016, subdivision (a).[1] CNA exclusively represented Staff Nurses and Case Managers employed by Verity at OCH and SLRH before the County assumed ownership of the hospitals on March 1, 2019.[2] Although CNA's representative status is at the heart of this dispute, CNA meets the definition of "employee organization" under MMBA section 3501, subdivision (a)(2) because, at the very least, it seeks to represent current County employees in their employment relations with the County.

RNPA is an exclusive representative within the meaning of MMBA section 3501, subdivisions (a) and (b), and PERB Regulation 32016, subdivision (b). RNPA represents the County's Registered Nurses bargaining unit, which contains approximately 2,200 to 2,400 employees in fifteen classifications, including the Clinical Nurse classifications.

CEMA is also an exclusive representative within the meaning of MMBA section 3501, subdivisions (a) and (b), and PERB Regulation 32016, subdivision (b). CEMA represents approximately 2,000 to 2,200 employees in the County's Supervisory-Administrative bargaining unit, including the Patient Services Care Coordinator classifications.

[1] The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[2] All additional dates refer to 2019 unless otherwise noted.

OCH and SLRH Operations before March 1, 2019

The Daughters of Charity Health System, a religious organization, operated six hospitals located in three counties, including OCH in San Jose and SLRH in Gilroy,[3] before selling the six hospitals to Verity in 2014. OCH and SLRH are general acute care hospitals with 334 and 72 beds, respectively. Both operate under a mixed intensive care unit model, which means their nurses provide an array of general medical and emergency care services (e.g., respond to medical, surgical, coronary, or neurological needs).[4] They do not, however, provide specialized trauma, burn, psychiatric, or pediatric services.

CNA became the exclusive representative for Staff Nurses at OCH and SLRH in the early 2000s. In 2009, the CNA-represented nurses at OCH, SLRH, and two other Daughters of Charity hospitals formed a single bargaining unit, and began operating under a master collective bargaining agreement (CBA) and a series of supplemental local CBAs specific to each hospital. In 2016, after the transfer of ownership from Daughters of Charity to Verity, Verity and CNA agreed to include Case Managers in the bargaining unit.

In 2016, Verity and CNA entered into 3 four-year CBAs covering the employees at issue: the master contract between Verity and CNA, and two local contracts specific to the OCH and SLRH locations. All three CBAs were effective through December 2020.

[3] Both hospitals are located in Santa Clara County. The remaining hospitals were located in Los Angeles and San Mateo Counties.

[4] In contrast, the County's Valley Medical Center (VMC), a regional tertiary care hospital located one mile from OCH, operates under a dedicated intensive care unit model, meaning that its nurses are specifically trained and assigned to work in single, dedicated medical units (e.g., burn, trauma, surgical, emergency pediatric care, etc.).

The County's Purchase of OCH and SLRH

On August 31, 2018, Verity filed for bankruptcy in the U.S. Bankruptcy Court for the Central District of California. During the ensuing bankruptcy process, Verity contacted the County to express its interest in selling OCH and SLRH to the County. On or about October 1, 2018, Verity and the County signed an Asset Purchase Agreement regarding the planned purchase of OCH and SLRH.[5] The purchase was conditioned, in relevant part, on the County's agreement that it would offer provisional employment to "substantially all" of Verity's employees at OCH and SLRH. The County's performance, however, was subject to compliance with its hiring practices, including any practices contained in its Ordinance Code,[6] and required that Verity's employees meet the minimum qualifications for the positions offered by the County. Verity and the County further agreed that the County would provide the incoming employees terms and conditions of employment consistent with those offered to other County employees in the same or substantially similar County classifications. The sale also was contingent on the bankruptcy court's termination of the labor contracts between Verity and labor unions representing its employees at OCH and SLRH.

On December 27, 2018, the bankruptcy court authorized Verity's sale of OCH and SLRH to the County. On January 2, in accordance with the Asset Purchase Agreement, Verity filed a motion requesting termination of all applicable CBAs related to OCH and SLRH, including those between Verity and CNA. The bankruptcy court granted the motion on February 19, over CNA's objection.

[5] The bankruptcy court approved the Asset Purchase Agreement on October 31, 2018.

[6] The County Ordinance Code includes a series of merit system rules, which are described in further detail below.

Meanwhile, in January and February 2019, the County sent a "Conditional Offer of Provisional Employment" to Verity's Staff Nurses and Case Managers. Therein, the County offered the recipients provisional employment as Clinical Nurses or Patient Services Care Coordinators, respectively. The County also informed the recipients that, should they accept the County's offer of employment, their assigned job classifications were allocated to bargaining units represented by RNPA or CEMA. The County further notified them of certain terms and conditions of employment corresponding to such representation. Ultimately, the County hired approximately 603 Verity employees who had worked in Staff Nurse and Case Manager positions at OCH and SLRH.

OCH and SLRH Operations after March 1, 2019

On March 1, at 12:01 a.m., the County assumed ownership of both hospitals without any interruption to patient care. Following the transfer of ownership, OCH and SLRH continue to provide the same services to the communities they serve, including surgical, pediatric, labor and delivery, cardiac, and neurological care.[7] In providing such services, the Clinical Nurses' and Patient Services Care Coordinators' job duties remain the same. They consistently testified that they continue to perform the same work using the same methods, tools, and equipment as they did under Verity, though there is some evidence that the County

[7] Even before the transfer, Paul Lorenz, CEO of the County's Health and Hospital System (Enterprise), explained to Verity's employees that the County did not intend to change the services available at OCH and SLRH or otherwise interrupt their day-to-day routines. Though he also explained that the County would eventually expand and increase the utilization of services available, there was limited evidence that such efforts had been made before the record in this matter closed.

has upgraded a portion of the patient beds.[8] They also continue to use the same electronic medical charting systems.

The Clinical Nurses and Patient Services Care Coordinators continue to operate under similar working conditions as they did under Verity. They continue to report to work in the same hospital units that they had been assigned to work under Verity's ownership. Their work schedules and staffing levels remain unchanged, and they continue to receive the same amount of time for rest and meal breaks. Nor have their supervisors' expectations of them changed. Though some of the hospital units have experienced a slight increase in patient census, the majority are the same as they were prior to the transfer. The increase in patients has been minimal and appears to follow the same fluctuating patterns that existed before the sale. Furthermore, OCH and SLRH maintain the same number of patient beds and treatment stations as before the transition. Therefore, the scale of operations under both Verity and the County is similar.

Additionally, there is little evidence of interchange or contact between the Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH, and other nursing staff at VMC or other County locations. The former Verity employees testified that the County had not assigned them to work at VMC, nor provided them with any additional cross-training enabling them to work at VMC. They also testified that they had not attended any joint employee meetings or County-sponsored social functions with other County employees since

[8] The County states that it plans to further invest in new equipment (e.g., ultrasound machines, MRI technologies) and electronic recordkeeping systems in the future, as well as assign new classifications (e.g., social workers and housing coordinators) to work at OCH and SLRH. But the majority of these changes have not been implemented yet. Thus, it is clear that the employees continue to use most of their predecessor employer's equipment.

becoming County employees.[9] The County presented comparatively minimal evidence of any confluence between the OCH and SLRH Clinical Nurse and Patient Services Care Coordinators and other nursing staff at other County locations.[10] Accordingly, any interchange or contact between the Clinical Nurses and Patient Services Care Coordinators at OCH, SLRH, and VMC is minimal.

In order to operate OCH and SLRH with VMC under a single hospital license, the County integrated them beneath a centralized management team: the Enterprise CEO, Enterprise COO, Enterprise Medical Staff President, a Chief Medical Officer, and a Chief Nursing Officer. However, upper management at OCH and SLRH (i.e., the hospital executives, nursing executives, and local human resources directors), as well as the Clinical Nurses' and Patient Services Care Coordinators' direct supervisors and assistant supervisors, remain the same with one exception: the County promoted one of Verity's nursing managers at SLRH to upper management.

[9] A County witness testified that the County was planning several social events in May 2019 to celebrate "Nurses Week," involving joint events between employees at OCH, SLRH, and VMC. But the majority of those events were merely in the planning stages at the time of the hearing.

[10] The County presented evidence that the RNPA contract allows Clinical Nurses to "float" between OCH, SLRH, and VMC, provided they meet the departmental competency standards. RNPA Co-Vice President Allan Kamara, a Clinical Nurse at VMC, similarly testified that he worked in VMC's Emergency Room with some nurses from OCH and SLRH after the County purchased the hospitals, though he did not identify those nurses or their classifications. He also testified that the County offered all staff, including Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH, an opportunity to attend a neurosurgery seminar on March 28. Though he did not know the total number of former Verity employees in attendance, he testified that he met with at least one nurse from SLRH.

The County's Ordinance Code

A. Merit System Rules

The County Ordinance Code includes a series of merit system rules. In accordance with its merit system, the County's Employee Services Agency (ESA)[11] administers its classification plan.

Under the merit system rules, the ESA must allocate each County position to a job classification. In doing so, it must "analyze the duties and responsibilities of all positions [and] group them into classes." This process requires the ESA to allocate positions to the "same class when their duties and responsibilities are enough alike to justify the same descriptive title, definition of duties and responsibilities and employment standards."

ESA Director John Mills (Mills) described how a new position is usually allocated to an existing or new classification. When an appointing authority wishes to create a new position, he or she prepares a recommendation, including a description of the proposed position's job duties, which are ultimately referred to the ESA for investigation. The ESA will examine the proposed job duty statement and compare it with existing classifications to determine whether there is a sufficiently similar job description, in which case the new position is allocated to that classification. If a comparable classification does not exist, the ESA will recommend creating a new job classification. Mills testified that the County allocates new positions to existing classifications "quite frequently."

In December 2018, in anticipation of the transfer of OCH and SLRH to the County, the ESA compared Verity's Staff Nurse and Case Manager job descriptions with those of existing County job classifications. From this comparison, the County determined that Verity's Staff

[11] The ESA encompasses the County's Human Resources, Employee Benefits, and Labor Relations Departments.

Nurse and Case Manager positions were sufficiently similar to the County's existing Clinical Nurse and Patient Services Care Coordinator classifications, respectively, in scope, duties, and minimum job requirements. ESA therefore decided to offer the Verity nurses and case managers positions in those County classifications rather than create new classifications for their incoming positions.

B. Local Employee-Management Relations Rules

The County Ordinance Code also includes local employee-management relations rules (Local Rules or Rules) addressing matters of representation. The Local Rules define the procedures to establish bargaining units and recognize an employee organization as the exclusive representative.

In accordance with Rules A25-370 and A25-371, once the County establishes a bargaining unit, the existing unit may be modified to "include a County classification" or for the "merging of unit(s), creation of new unit(s), [or] moving of classification(s) from one unit to another." The Local Rules provide only two paths to modify an existing unit: (1) by petition filed between 150 to 120 days prior to the termination of the applicable existing MOA, or (2) by mutual agreement between the County and the affected employee organizations. All unit modification petitions must be accompanied by proof of employee support from more than fifty percent of the employees covered by the petition.

PROCEDURAL HISTORY

On February 8, CNA filed an unfair practice charge alleging that the County's refusal to recognize CNA as the exclusive representative of Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH, and its assignment of those employees to existing County bargaining units, violated the MMBA because the County was the "successor employer" to

Verity under the federal successorship doctrine.[12] CNA further alleged that the County had unreasonably applied its local rules to modify the RNPA and CEMA bargaining units, and unlawfully implemented unilateral changes to the incoming employees' terms and conditions of employment.

Concurrent with its charge, CNA filed a request under PERB Regulation 32147, subdivision (b) to expedite the charge at all levels. On February 25, the County opposed the motion. Joined Parties RNPA and CEMA did not take positions on CNA's request.[13]

On February 20, CNA filed a request for injunctive relief, asking PERB to seek an injunction preventing the County from recognizing RNPA and CEMA as the Clinical Nurses' and Patient Services Care Coordinators' exclusive representative, respectively, following the transfer of hospital ownership on March 1. In its request, CNA alleged that: (1) the County intended to unlawfully withdraw recognition of and refuse to bargain with CNA as the rightful exclusive representative of those employees at OCH and SLRH; and (2) injunctive relief was just and proper because the County's actions would impair employees' statutory right to a representative of their choosing, and, absent injunctive relief, the Board's administrative procedures would be rendered meaningless and the efficacy of any potential Board order

[12] The National Labor Relations Board (NLRB) developed the successorship doctrine to address the legal rights and obligations of employers, employees, and exclusive representatives during changes in the ownership of private sector entities. (1 Higgins, *The Developing Labor Law* (6th ed. 2012) pp. 1173-1174; see George, *The Bargaining Obligations of Successor Employers* (1975) 88 Harv. L. Rev. 759-760 [describing the competing policy interests served by the successorship doctrine].)

[13] RNPA filed an application for joinder on February 15. CEMA filed an application for joinder on February 21. Based on the factors set forth in PERB Regulation 32164, PERB granted RNPA's and CEMA's applications for joinder on February 21 and March 4, respectively.

nullified. On February 22, the County and RNPA filed separate oppositions to CNA's request for injunctive relief.

On March 4, PERB's Office of the General Counsel issued a complaint alleging that the County was a successor employer to Verity and therefore obligated to recognize CNA as the exclusive representative of Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH. The complaint specifically alleged that the County: (1) unilaterally changed the terms and conditions of employment of former Verity employees at OCH and SLRH, (2) bypassed CNA and dealt directly with those employees, (3) withdrew recognition from CNA, (4) failed and refused to meet and confer in good faith with CNA, and (5) violated local representation rules by placing the incoming employees into existing bargaining units represented by RNPA and CEMA.

Also on March 4, the Board itself granted CNA's request to expedite this case. The Board ordered that: (1) an administrative law judge (ALJ) hold an expedited evidentiary hearing on the allegations in the complaint, (2) the record from the expedited hearing and the parties' post-hearing briefs be submitted to the Board itself for decision in accordance with PERB Regulation 32215, and (3) CNA's request for injunctive relief would remain pending before the Board without prejudice to any party submitting additional information relevant to the request.

On March 7, the parties participated in an informal settlement conference but the matter was not resolved.

On March 25, the County answered the complaint, denying any violation of the MMBA and asserting several affirmative defenses.

The formal hearing took place on April 11-12, 15, 18-19, and 22. On April 18, the County made an oral motion to dismiss the complaint following CNA's presentation of its case-in-chief, arguing CNA failed to establish that the County had any obligation to recognize and bargain with CNA. The ALJ took the County's motion under submission for resolution by the Board itself.[14]

On May 13, after the formal hearing concluded and before the parties' deadline to file post-hearing briefs, the County filed with PERB a written motion to dismiss the complaint. On May 20, CNA requested that it be permitted to consolidate its post-hearing brief and response to the County's motion. On May 22, the Board itself granted CNA's request, ordering all parties to file their post-hearing briefs, including any response to the County's motion to dismiss the complaint, by June 10.[15]

The parties filed post-hearing briefs on June 10.[16] At that time, the record was closed and the matter submitted for decision by the Board itself.

CONCLUSIONS OF LAW

I. The County as a Successor Employer of Verity Employees

This case presents the scenario of "reverse privatization" in which a public entity acquires a private entity's operations, and hires the private entity's employees to continue

[14] The ALJ correctly declined to rule on the County's motion because the Board's March 4 order directed that the Board, not the ALJ, would decide the merits of the case.

[15] After the Board addressed procedural questions related to the County's motion to dismiss the complaint and granted CNA's request for consolidated briefing, RNPA and CEMA joined the County's motion, incorporating it by reference in separate letters to PERB.

[16] CEMA filed its post-hearing brief at 5:02 p.m. on June 10. Although CEMA provided no explanation for filing its brief two minutes after the 5:00 p.m. deadline, in the absence of any apparent or claimed prejudice to the other parties we exercise our discretion under PERB Regulation 32136 to excuse the late filing.

those operations as part of the public entity's already unionized workforce. The main issue before us is whether CNA's status as exclusive representative of the Staff Nurses and Case Managers at OCH and SLRH necessarily continues unchanged following the hospitals' transfer of ownership and the County's hiring of Verity's former employees.[17] CNA urges us to adopt the NLRB's successorship doctrine and further urges that NLRB principles require us to direct the County to recognize and bargain with CNA as the exclusive representative of Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH. The County, RNPA, and CEMA, on the other hand, argue that federal successorship law should not apply in the public sector but, if it does, the County appropriately integrated Verity's former nurses and case managers into the County's existing bargaining units. As we explain, a modified version of the NLRB's successorship doctrine is appropriate in California's public sector, but under the successorship principles we endorse, integration of Verity's former nurses and case managers into the County's existing bargaining units was appropriate.

A. Successorship Under Federal Law

Under the NLRB's successorship doctrine, a successor employer must recognize and bargain with the union certified to represent the employees of its predecessor. (*Fall River Dyeing & Finishing Corp. v. NLRB* (1987) 482 U.S. 27, 46 (*Fall River*).) "If the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation . . . is activated." (*Id.* at p. 41.)

[17] The complaint allegations of unilateral change, bypass and direct dealing, withdrawal of recognition, and failure and refusal to meet and confer in good faith are premised on the County being a successor employer, and thereby having a duty to recognize and bargain with CNA as the exclusive representative of Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH.

The NLRB's test for determining successorship is well established:

> An employer, generally, succeeds to the collective-bargaining obligation of a predecessor if a majority of its employees, consisting of a "substantial and representative complement," in an appropriate bargaining unit are former employees of the predecessor and if the similarities between the two operations manifest a "'substantial continuity' between the enterprises."

(*Van Lear Equipment, Inc.* (2001) 336 NLRB 1059, 1063.) A successor determination creates a presumption that the union which represented the predecessor's employees "continues to enjoy majority status with the successor's employees." (*Community Hospitals of Central Cal.* (2001) 335 NLRB 1318, 1332 (*Community Hospitals*), citing *Briggs Plumbingware v. NLRB* (6th Cir. 1989) 877 F.2d 1282, 1285-1286.) The reason for this presumption is that a "mere change in ownership, without an essential change in working conditions, would not be likely to change employee attitudes toward representation." (*Community Hospitals, supra*, 335 NLRB at p. 1334, citing *NLRB v. Burns International Security Services* (1972) 406 U.S. 272, 278-279 (*Burns*).)

B. Successorship Under PERB Precedent

The Board has addressed the NLRB's successorship doctrine in only one decision: *Regents of the University of California* (1994) PERB Decision No. 1039-H (*Regents*). That decision arose in similar circumstances when the University of California (UC) purchased the private Mt. Zion Hospital and Medical Center (Mt. Zion). Prior to this purchase, Service Employees International Union (SEIU) represented certain employees at Mt. Zion. Two months prior to the transfer in ownership, UC offered employment to the Mt. Zion employees, advising them that, as UC employees, they would be represented by the exclusive representative for the existing bargaining units to which their new UC job classifications were assigned. (*Id.* at pp. 6-7.)

SEIU filed a petition to represent the relevant Mt. Zion employees. It also filed an unfair practice charge alleging that UC was the successor employer to Mt. Zion, and that UC therefore violated the Higher Education Employer-Employee Relations Act (HEERA)[18] by refusing to recognize SEIU as the exclusive representative of the petitioned-for employees and by assigning them to existing UC bargaining units. (*Regents, supra*, PERB Decision No. 1039-H, pp. 2-3.)

The ALJ determined that UC appropriately placed the former Mt. Zion employees into its existing units, reasoning that UC bargaining units established by PERB are presumptively valid and that SEIU failed to rebut that presumption by showing that its proposed unit at Mt. Zion was more appropriate. (*Regents, supra*, PERB Decision No. 1039-H, pp. 10-11.) In a single sentence that neither adopted nor rejected the ALJ's reasoning, the Board affirmed the ALJ's conclusion. (*Id.* at p. 14.)

As an alternative basis for its decision—which the Board seemingly relied upon to at least an equal degree—the Board then concluded that, assuming the NLRB's successorship and accretion doctrines applied to public agencies, UC was not obligated to recognize SEIU because the Mt. Zion employees were properly accreted to the existing bargaining units into which they were placed. Listing the relevant accretion factors under federal law, the Board gave little explanation of the successorship doctrine's application in California's public sector, if any, finding instead that "this is clearly a case of accretion" because each of the federal factors favored adding the Mt. Zion employees to UC's existing bargaining units. (*Regents, supra*, PERB Decision No. 1039-H, pp. 14-15.)

[18] HEERA is codified at Government Code section 3560 et seq.

In *Regents*, as here, there was no material change in working conditions following the transfer of ownership and little or no evidence of actual interchange between the Mt. Zion and UC employees. Nonetheless, the Board found it sufficient that their "similar working skills" made them potentially "interchangeable." (*Regents*, *supra*, PERB Decision No. 1039-H, p. 15.) The Board also found that Mt. Zion had become an integral part of the UC medical system as a whole:

> [UC] has made a determined effort to integrate Mt. Zion into [its existing medical] system since its acquisition [four years prior]. . . . There is nothing in the record to indicate that the goal of establishing standards of care at Mt. Zion, consistent with other facilities within the . . . system, has not been achieved.

(*Id.* at p. 7 [citing integration of contract and marketing, finance and budget, personnel and labor relations, information systems, pharmaceutical services, material and support services, and nursing].) Moreover, UC had sufficiently begun the process to integrate Mt. Zion's employees into its existing bargaining unit structure beginning on the day it acquired the hospital. (*Id.* at p. 9.) Accordingly, and despite the absence of employee interchange or any substantial change in any working conditions following the transfer of ownership, the Board found accretion to be appropriate. (*Id.* at pp. 14-15.)

The Board has not addressed application of the *Regents* successorship-accretion doctrine under the MMBA. CNA argues PERB should apply the NLRB's successorship doctrine strictly, claiming the federal doctrine is consistent with the MMBA's purpose of promoting harmonious labor relations. In contrast, the County argues that neither the language nor legislative history of the MMBA refer to successorship, and thus claims its absence demonstrates the Legislature did not intend for successorship principles to apply under the MMBA.

Asserting that PERB cannot read a successorship provision into the MMBA, the County points out that the Legislature has enacted unequivocal successorship provisions in just two statutory schemes since our 1994 decision in *Regents*: the County Employees Retirement Law of 1937, as it applies to the Contra Costa County Employees Retirement Association (Gov. Code, § 31522.9, subd. (g)), and the Trial Court Employment Protection and Governance Act (see, e.g., Gov. Code, §§ 71615, subd. (c)(5) and 71638, subd. (a)). Yet in that same period, the County notes, the Legislature has amended the MMBA seven times without incorporating the NLRB's successorship doctrine.

Although the Legislature could have explicitly addressed successorship in the MMBA, its failure to do so does not mean it intended to prohibit application of the successorship doctrine to local public agencies. (See *County Sanitation Dist. No. 2 v. Los Angeles County Employees Assn.* (1985) 38 Cal.3d 564, 584 ["Legislative silence is not the equivalent of positive legislation"].) Notably, the federal successorship doctrine derives not from an express statutory provision but more generally from section 8(a)(5) of the National Labor Relations Act (NLRA),[19] which prohibits private sector employers from refusing to bargain with their employees' chosen representative. (See, *Burns*, *supra*, 406 U.S. at pp. 277, 286; *Fall River*, *supra*, 482 U.S. at p. 41.) At its core, the doctrine protects employees' bargaining rights by recognizing that their selected representative should not be ousted due to a "mere change of employers." (*Fall River*, *supra*, 482 U.S. at p. 37.) The MMBA similarly protects public sector employees' right to bargain collectively through an employee representative of their own choosing. (MMBA, § 3502.) And the MMBA also bars public agencies from refusing to bargain with their employees' chosen representative. (Compare MMBA, § 3505 with NLRA,

[19] The NLRA is codified at 29 U.S.C. section 151 et seq.

§ 8(a)(5).)[20] In light of these similarities between federal and state law, we find nothing that precludes application of the successorship doctrine under the MMBA.[21]

Nevertheless, there are certain differences between private and public sector employment that require modification of federal successorship principles to better fit the public sector context. In comparison with the private sector, public sector employment "is complicated and cumbersome, with operations involving numerous agencies, rules and regulations, and civil service laws." (*Kent State University* (1992) 9 OPER ¶ 1268, 1992 WL 12649416 [Ohio State Employment Relations Board].) Civil service classifications also change frequently. As a result, public sector bargaining units may require modification to avoid fragmentation and ensure operational efficiency. The existence of appropriate and rationally structured bargaining units is the cornerstone of stability in public sector labor relations. Consequently, "a more flexible accretion policy is needed in the public sector to ensure that unit structure can respond to inevitable changes." (*Ibid*.)

[20] PERB generally considers NLRB precedent for its persuasive value when it is consistent with California authority. (*Contra Costa Community College District* (2019) PERB Decision No. 2652, p. 27, fn. 17.)

[21] The public employment relations boards or commissions of Florida, Illinois, Michigan, Pennsylvania, and Washington have adopted and applied elements of the NLRB's successorship doctrine. (*United Faculty of Florida v. Public Employees Relations Commn.* (Fla. App. 2005) 898 So.2d 96, 101; *Metropolitan Community College District*, 15 PERI ¶ 1046, 1998 WL 35395266 [Illinois Educational Labor Relations Board]; *Michigan Educ. Assn. v. North Dearborn Heights School Dist.* (Mich. App. 1988) 425 N.W.2d 503, 512; *Milton Regional Sewer Authority*, 24 PPER ¶ 159, 2003 WL 26073041 [Pennsylvania Labor Relations Board]; *Municipality of Metropolitan Seattle* (1986) PERC Decision 2358-A, 1986 WL 327116 [Washington Public Employment Relations Commission].) Of particular relevance, the Washington Public Employment Relations Commission has applied the doctrine when a public entity acquires part of a private entity's operations. (*Ben Franklin Transit* (1986) PERC Decision 2357-A, 1986 WL 327114; *Spokane Airport Board* (1980) PERC Decision 919, 1980 WL 317790.)

Regents attempted to synthesize these federal and state policy considerations. As the Board has not had occasion to revisit the successorship doctrine since *Regents*, we take this opportunity to contextualize the decision and clarify that PERB follows federal successorship precedent only to the extent it is consistent with state law governing public sector labor relations. As discussed further below, we adopt the NLRB's three-part test for determining successorship, but we follow PERB decisional law, not federal law, in determining whether employees hired from a private sector predecessor employer are appropriately merged into existing public sector bargaining units after a transfer of operations or ownership.

C. Application of PERB's Successorship Doctrine in this Case

1. Continuity of Workforce

The first step in the successorship analysis is to determine whether the alleged successor employer hired a "substantial and representative complement" of the predecessor's employees. This question turns on the "composition of the successor's work force," i.e., whether the majority of the employees in the successor bargaining unit worked for the predecessor employer.[22] (*Fall River*, *supra*, 482 U.S. at p. 46, fn. 12; *Community Hospitals*, *supra*, 335 NLRB at p. 1332; *Burns*, *supra*, 406 U.S. at p. 281.)

The County argues that Verity's former employees do not comprise a majority of the County's workforce because they constitute only one quarter of the thousands of bargaining

[22] In cases where there was a hiatus or temporary reduction in operations upon the successor's takeover, majority status is determined as of the date the successor had hired a "substantial and representative complement" of the predecessor's employees. (*Fall River, supra*, 482 U.S. at pp. 49-52; *Capitol Steel & Iron Co.* (1990) 299 NLRB 484, 486, fn. 5.) Because the County continued Verity's operations at OCH and SLRH without interruption and thus had a full complement of employees at those facilities on March 1, 2019, majority status is determined as of that date. (*Sprain Brook Manor Rehab, LLC* (2017) 365 NLRB No. 45.)

unit employees that RNPA and CEMA currently represent.[23] This argument misconstrues the applicable test. *Fall River* requires that majority status be determined by comparing the number of predecessor employees the alleged successor employer hired with the total number of employees *in the bargaining unit the incumbent union claims to still represent*. (*Community Hospitals*, *supra*, 335 NLRB at pp. 1332; see also, *United Maintenance & Manufacturing Co.* (1974) 214 NLRB 529, 532-533 [successorship supported "when a majority of the new employer's work complement . . . come[s] from the predecessor's bargaining unit].) Mathematically speaking, the number of predecessor employees hired must be divided by the total number of employees in the unit the incumbent union claims to still represent. In *Community Hospitals*, for example, the union claimed to still represent a bargaining unit of

[23] The County also argues that CNA failed to prove this element of the successorship test because it did not introduce evidence in its case-in-chief showing the total number of Verity employees the County hired to work at OCH and SLRH. At the close of its case-in-chief, however, CNA introduced several exhibits purportedly demonstrating that the majority of the County's Clinical Nurses and Patient Services Care Coordinators at OCH and SLRH had been Verity employees at the same hospitals. Two of those documents, which CNA received from Verity before the transfer, listed employees working as Staff Nurses and Case Managers at OCH and SLRH at that time. The other two documents, which the County provided to CNA before the hearing in response to a records subpoena, listed the names of employees in the relevant County classifications as of March 25.

The County argues these documents cannot be used to prove CNA's case because they are hearsay. CNA counters that the documents fall under the business records exception to the hearsay rule. Although the technical rules of evidence do not apply in PERB unfair practice cases, a factual finding cannot be based solely on uncorroborated hearsay that does not satisfy one of the statutory exceptions. (PERB Reg. 32176.) But we need not decide whether an exception to the hearsay rule applies because the County presented evidence about the number of job offers extended to and accepted by former Verity employees. Although the County's evidence was not linked directly to CNA's more specific exhibits, it generally mirrored or corroborated CNA's documents. The County urges us to rule based solely on CNA's evidence, but it provides no legal authority—nor are we aware of any—requiring us to ignore relevant evidence merely because it was presented by the party without the burden of proof. Therefore, even if CNA's exhibits are hearsay, we find sufficient corroborating evidence in the record to consider them in determining whether the County hired a majority of Verity's Staff Nurses and Case Managers to work at OCH and SLRH after the transfer of ownership.

307 registered nurses. Because 278 of the nurses had been employed by the predecessor—approximately 91 percent of the unit the union claimed to still represent—the NLRB found majority status. (*Id.* at pp. 1319, 1332-1333.)

This approach is appropriate because it bars employers from unilaterally setting the successor bargaining unit size so large as to skew the proportion of predecessor-to-successor bargaining unit employees. The alleged successor thus is not able to influence the math as a means of escaping its bargaining obligations. This method is consistent with the successorship doctrine's overriding purpose of achieving "industrial peace." (See *Fall River*, *supra*, 482 U.S. at p. 38 [presumption of continuing majority support when successorship test is met "remove[s] any temptation on the part of the employer to [engage in conduct that may otherwise] undermine the union's support among employees."].)

In this case, the County clearly hired a majority of Verity's Staff Nurses and Case Managers to fill the Clinical Nurse and Patient Services Care Coordinator positions at OCH and SLRH. Specifically, of the approximately 641 Clinical Nurses and Patient Services Care Coordinators the County hired at OCH and SLRH, approximately 603 positions were filled by former Verity employees. Thus, CNA established that the County hired a substantial and representative complement of the employees formerly employed by Verity, and represented by CNA, at OCH and SLRH.

2. Continuity of Operations

Once it is determined that the predecessor's former employees comprise a majority of the unit the incumbent union claims to still represent, we must examine whether there is continuity of operations between the predecessor and successor employers. In *Fall River*, the

U.S. Supreme Court enumerated the following factors relevant to determining continuity of operations between a predecessor and successor employer:

> [W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors, and whether the new entity has the same production process, produces the same products, and has basically the same body of customers.

(*Fall River*, *supra*, 482 U.S. at p. 43.) These factors, which are primarily factual in nature and based upon the totality of the circumstances, focus our inquiry on whether the alleged successor "acquired substantial assets of its predecessor and continued, without interruption or substantial change, the predecessor's business operations." (*Ibid.*, citing *Golden State Bottling Co. v. NLRB* (1973) 414 U.S. 168, 184.)

The substantial continuity question is "assessed primarily from the perspective of the [involved] employees, that is, 'whether [the] employees who have been retained will . . . view their job situation as essentially unaltered.'" (*Van Lear Equipment*, *supra* 336 NLRB at p. 1063, quoting *Fall River*, *supra*, 482 U.S. at p. 43.) For instance, the NLRB found a private transportation company to be the successor of a public school district where "viewed from the drivers' perspective, the drivers are performing the same work they performed as [district] employees—transporting school children to and from [district] schools by school bus and van." (*Van Lear Equipment*, *supra*, 336 NLRB at p. 1064.)

Here, the County continued Verity's operations at OCH and SLRH with no interruption in services. Verity relinquished and the County assumed control over the facilities and employees at 12:01 a.m. on March 1. In such circumstances, the relevant employees would naturally view their situation as essentially unaltered and, presumably, their attitudes toward representation remain unchanged. (See *Community Hospitals*, *supra*, 335 NLRB at p. 1334,

citing *Burns*, *supra*, 406 U.S. at pp. 278-279.) However, a hiatus in operations, or the absence of one, is only one factor in the substantial continuity calculus.

As to the relevant employees' view of their job situation, CNA presented as witnesses ten former CNA bargaining unit employees at OCH and SLRH: nine Staff Nurses and one Case Manager who were formerly employed by Verity and are now employed by the County. The witnesses consistently testified that they continue to provide the same services, performing their same job duties in generally the same working conditions under the same immediate supervisors. Their unit assignments, schedules, breaks, and staffing levels remain unchanged, and they use the same tools, equipment, and electronic medical charting systems as they did under Verity. Though the County integrated the hospitals under a new executive management team, there was no evidence demonstrating any day-to-day interactions between that team and the Clinical Nurses or Patient Services Care Coordinators at OCH and SLRH. The evidence shows that their immediate supervisors, as well as upper management at OCH and SLRH, remained the same (with one exception resulting from internal promotion).

The scale of operations generally remains the same as well. A few medical units at both OCH and SLRH have experienced slight increases in patient census. However, the evidence shows a greater number of the units have maintained the same census numbers, patient beds, and treatment status as they had before the transition of ownership. Thus, the business of Verity and the County, as well as their general body of consumers, remains the same.

The County presented evidence that it plans to invest in new equipment and electronic recordkeeping systems in the future, as well as its estimated costs for such investments; expand hospital operations; and assign new classifications to work at OCH and SLRH. While such

changes would likely not be significant enough to counter the substantial evidence establishing a continuity of operations, in any event these changes had not yet been implemented before the record in this matter closed. Nor did the County present any evidence that those gears had begun to turn before it became obligated to determine whether it had a duty to recognize and bargain with CNA. An employer cannot rely on prospective changes that may or may not be implemented in the future and might someday create some doubt as to the substantial continuity of its business. (See, e.g., *Ready Mix USA, Inc.* (2003) 340 NLRB 946, 948 [contrary to its assertion that it had plans for future operational changes, employer had no definite plan at the time it acquired concrete plants, three days prior to incumbent union's bargaining request]; *Torch Operating Co.* (1997) 322 NLRB 939, 939 [installation of new equipment to support different production methods begun only after the incumbent union requested recognition].) This is particularly relevant here, where the County failed to present any evidence that it was actually in the process of implementing the prospective changes (e.g., signed contracts for services or receipts confirming the purchase of new equipment in transition). The County thus failed to present any evidence that the relevant employees' job duties have changed or will, in fact, change sufficiently to alter their perspective of their day-to-day work. Based on the totality of the circumstances, we find substantial continuity between Verity's and the County's operations at OCH and SLRH.

3. The Relative Appropriateness of CNA's Preferred Stand-Alone Bargaining Unit at OCH and SLRH Versus the Accretion Favored by the County, CEMA, and RNPA

Under federal law, the remaining step of the successorship analysis is to determine whether the employees in the operations acquired from the predecessor constitute an appropriate bargaining unit within the successor employer's operation. The existence of

successorship is thus predicated on finding that the predecessor's bargaining unit remains intact under the successor. As the U.S. Supreme Court said in *Burns*, "It would be a wholly different case if . . . [the] bargaining unit was no longer an appropriate one." (*Burns*, *supra*, 406 U.S. at p. 280; *Border Steel Rolling Mills* (1973) 204 NLRB 814, 821; compare *Children's Hospital of San Francisco* (1993) 312 NLRB 920, 928-930 (*Children's Hospital*) [finding that unit of nurses working at newly-acquired hospital had not "lost its identity as a separate appropriate unit"].) If the unit is not appropriate, successorship cannot be found. (*Ready Mix USA*, *supra*, 340 NLRB at p. 955; *Border Steel Rolling Mills*, *supra*, 204 NLRB at p. 822.)

The NLRB applies traditional unit determination criteria to analyze whether a predecessor bargaining unit remains appropriate for successorship purposes. (*Children's Hospital*, *supra*, 312 NLRB at pp. 928-929.) Under federal law, an important factor—and often a determinative one—is the predecessor's history of bargaining with the unit as constituted. (*Ready Mix USA*, *supra*, 340 NLRB at p. 947.) "[T]here is a strong presumption favoring the maintenance of historically recognized bargaining units." (*Trident Seafoods v. NLRB* (D.C. Cir. 1996) 101 F.3d 111, 114.) The NLRB thus "places a heavy evidentiary burden on a party attempting to show that historical units are no longer appropriate." (*Banknote Corp. of America* (1994) 315 NLRB 1041, 1043.) But the new bargaining unit need not be the same as that which existed under the predecessor. (*International Union of Petroleum & Indus. Workers v. NLRB* (D.C. Cir. 1992) 980 F.2d 774, 780.) Thus, successorship also may be found where the successor acquires only part of the predecessor's operations, provided the employees in the acquired operations constitute a separate appropriate unit in themselves. (*Bronx Health Plan* (1998) 326 NLRB 810, 812; *Hydrolines, Inc.* (1991) 305 NLRB 416, 422-423.)

Additionally, the NLRB has adopted a presumption that single facility bargaining units are appropriate in the healthcare industry.[24] (*Children's Hospital*, *supra*, 312 NLRB at p. 928.) The presumption may be rebutted by showing a single facility unit is not appropriate based on "geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision, and bargaining history." (*Ibid.*, citing *West Jersey Health System* (1989) 293 NLRB 749, 751.)

In California's public sector, however, unit determination criteria serve a related, but ultimately different, purpose. The foundation of public sector labor relations is to protect employees' right to representation and to balance those rights with public employers' interest in maintaining operational efficiency. Accordingly, we generally seek to avoid the fragmentation of employee groups and proliferation of bargaining units, and focus on finding an appropriate unit in which the sought-after employees can realistically be represented. (*Regents of the University of California* (2017) PERB Order No. Ad-453-H, pp. 23-24; *El Monte Union High School District* (1982) PERB Decision No. 220, pp. 9-10; *Unit Determination for the State of California* (1979) PERB Decision No. 110-S, p. 6.)[25] Indeed, it was this traditional public sector preference for broader bargaining units that led the *Regents* Board to find UC had appropriately accreted the predecessor's employees into its broad existing units. (*Regents*, *supra*, PERB Decision No. 1039-H.)

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[24] CNA relies heavily on this presumption. But, as we explain below, the federal presumption is incompatible with the preference for broad bargaining units in California's public sector.

[25] Although the MMBA allows local public agencies to adopt their own unit determination criteria (MMBA, §§ 3507, subd. (a)(4), 3507.1, subd. (a)), such criteria typically are consistent with the principle of preferring broad units over a proliferation of smaller units. (See, e.g., *County of Orange* (2016) PERB Decision No. 2478-M, pp. 3-4; *County of Yolo* (2013) PERB Decision No. 2316-M, p. 10; *City of Glendale* (2007) PERB Order No. Ad-361-M, pp. 5-6.)

Though we may look to analogous federal precedent for guidance in construing California's public sector labor relations statutes, it is not controlling authority. (*Napa Valley Community College District* (2018) PERB Decision No. 2563, p. 13; see also, *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 616-617.) Thus, when federal law and the statutes under PERB's jurisdiction serve dissimilar purposes, we are not constrained to follow federal precedent. (*Capistrano Unified School District* (2015) PERB Decision No. 2440, p. 15.) Here, we depart from NLRB principles, as the distinction between federal and state law with regard to bargaining unit composition leads us to follow *Regents*, *supra*, PERB Decision No. 1039-H and our subsequent precedent regarding appropriate bargaining units.

In *Regents*, the Board relied on federal accretion principles to resolve whether UC appropriately integrated the former Mt. Zion employees into its broad existing units, and ultimately decided the matter before it was "clearly a case of accretion." (*Regents*, *supra*, PERB Decision No. 1039-H, pp. 14-15.) In the years since *Regents* was decided, PERB has developed its accretion standards more thoroughly and, as a result, they now deviate substantially from the federal accretion law cited therein.[26] We therefore follow the spirit of *Regents*, if not the letter of its law.

In accretion cases, the inquiry is whether the classifications to be added to the existing unit share a community of interest with employees in the existing unit. The community of interest analysis typically examines: job function and duties; wages; method of compensation; hours; employment benefits; supervision; qualifications, training, and skills; contact and interchange with other employees; integration of work functions; and common goals. (*City of*

[26] For a discussion of how PERB's accretion standard differs from the NLRB's, see *San Joaquin Regional Transit District* (2019) PERB Decision No. 2650-P, pp. 12-14, fns. 11-13, and *Regents of the University of California* (2010) PERB Decision No. 2107-H, pp. 22-23.

Sacramento (2014) PERB Decision No. 2354-M, adopting proposed decision at p. 9; *County of Riverside* (2010) PERB Decision No. 2119-M, p. 13.) In determining whether a community of interest exists, the Board considers the totality of circumstances to ascertain whether the employees share a substantial mutual interest in matters subject to meeting and negotiating. (*City of Palmdale* (2011) PERB Decision No. 2203-M, p. 6, citing *Monterey Peninsula Community College District* (1978) PERB Decision No. 76, p. 13.)

No party challenges the County's determination under its merit system rules that Verity Staff Nurses and Case Managers had similar job functions and duties, as well as similar minimum qualifications and training requirements, as the County's Clinical Nurse and Patient Services Care Coordinator classifications. Consequently, we accept that the former Verity employees are properly classified as Clinical Nurses and Patient Services Care Coordinators and presumptively share a community of interest with existing County employees in those classifications. (*Oakland Unified School District* (2016) PERB Decision No. 2509, p. 19; see *San Diego Unified School District* (1981) PERB Decision No. 170, p. 5 ["Every classification possesses a community of interest among its members."].)[27]

The evidence bears out this presumption. Verity's Staff Nurses and the County's Clinical Nurses share job functions and duties, as well as similar minimum qualifications and training. Both classifications provide patient care and nursing services in the medical-surgical or transitional level care setting. Both classifications also must be able to assess patient needs and medications, revise care plans, and assist physicians in various technical procedures. To

[27] This case therefore differs from the typical accretion case where a union seeks to add an unrepresented classification to its existing bargaining unit. (See, e.g., *Regents of the University of California*, *supra*, PERB Decision No. 2107-H [petition to add unrepresented case manager classification to health care professionals unit].) However, we applied accretion principles to a similar factual scenario in *Regents*, *supra*, PERB Decision 1039-H.

qualify for Grades I or II in each nursing classification, applicants must be new graduates with less than one year of experience or have more than one year of experience, respectively. Nurses in higher grades typically have three to four years of experience, and are viewed as "role models" with the skills and knowledge to assume charge nurse responsibilities and assist in the development or teaching of less experienced staff.

Verity's Case Manager and the County's Patient Services Care Coordinator are also similarly situated. The lone Patient Services Care Coordinator to appear at the hearing testified that both classifications share similar job duties: review and monitor patient treatments to determine when an alternative, or lower, level of care may be appropriate; coordinate patients' discharge; and assist in their transition to other facilities or medical assistance programs. Similarly, employment in either classification may require possession of a Registered Nurse license.

On the other hand, the differences in supervision and the current absence of any interchange between OCH and SLRH employees and those at the County's VMC hospital seemingly weigh against finding a community of interest. In *Regents*, however, the Board was not ultimately persuaded by evidence that there seemed to be little, if any, interchange between the employees at the newly-acquired facility and other UC medical centers. These factors similarly do not persuade us. The County provided evidence that it began tracking existing policies, procedures, and practices at the three medical facilities beginning on March 1, and formed a working group to review and consolidate those practices to establish a single medical staff with one standard of care. Moreover, the record is replete with testimony that the employees' working conditions have not changed substantially during the County's effort to integrate them within its existing bargaining units. Based on the classifications' similar

working skills and the County's ongoing transition toward a single medical staff, we find the potential for contact and interchange between the employees at OCH, SLRH, and VMC. Ultimately, as in *Regents*, the factors weighing in favor of a broader unit prevail even though, as is common, there is evidence in support of both possible unit configurations. (See *Regents*, *supra*, PERB Decision No. 1039-H, p. 15; *San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, p. 17 [finding in favor of accretion even while noting that, as is typical, some community of interest factors weigh against accretion].)

Notably, PERB refrains from ordering an incumbent representative to accrete or otherwise accept representation of a group of employees whom it does not wish to represent, even if the employees would be best placed in the existing unit following a community of interest analysis. (*Santa Clara Valley Water District* (2017) PERB Decision No. 2531-M, p. 17.) The record demonstrates that RNPA and CEMA are willing to represent the Clinical Nurses and Patient Services Care Coordinators. In such circumstances, the existing unit structure is appropriate and will sufficiently safeguard employees' right to representation.

Based on the totality of the circumstances, the County reasonably concluded that the Verity Staff Nurse and Case Manager positions were equivalent to the County's existing Clinical Nurse and Patient Services Care Coordinator classifications already assigned to the existing Registered Nurses and Supervisory-Administrative bargaining units, and the weight of the evidence counsels against creating a separate bargaining unit for those classifications at OCH and SLRH. Accordingly, we conclude that the County lawfully accreted the former Verity employees into the existing bargaining units represented by RNPA and CEMA.[28]

[28] In light of this conclusion, we need not address the County's argument that CNA is judicially estopped from seeking to represent the Clinical Nurses and Patient Services Care

For these reasons, the County had no obligation to recognize and bargain with CNA as the exclusive representative of the nurses and case managers formerly employed by Verity. Consequently, we dismiss the complaint allegations premised on the County's status as a successor employer, viz., the allegations of unilateral change, bypass and direct dealing, withdrawal of recognition, and failure and refusal to meet and confer in good faith.

II. Alleged Local Rule Violation

The MMBA grants local public agencies the authority to adopt "reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations." (MMBA, § 3507, subd. (a).) Among the rules that may be adopted are rules governing unit determinations and representation elections. (MMBA, § 3507.1, subd. (a).) PERB, in turn, "shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections." (MMBA, § 3509, subd. (c).)

The complaint alleges that the County violated its local rules by modifying the RNPA and CEMA units in the absence of a unit modification petition and without requiring proof of support. We dismiss this allegation because neither of the County's Local Rules governing unit modification procedures applies here.

The County did not modify the existing RNPA or CEMA units when it added the former Verity nurses and case managers to each unit. As CNA and the County concede, the County did not create any new job classifications. Rather, the County filled open OCH and SLRH positions in existing classifications, and RNPA and CEMA already represented these classifications. Thus, the County did not take either of the actions covered by its unit

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Coordinators at OCH and SLRH based on representations it made in the bankruptcy proceedings. Nor need we address the County's motion to dismiss the complaint.

modification rule, i.e., adding a classification to an existing unit or altering the distribution of existing classifications among units. We thus need not address whether the County's local rules require proof of employee support in these circumstances, or require the County to have taken any action during the MOAs' window periods. We accordingly dismiss the alleged local rule violations.

III. Request for Injunctive Relief

In order for PERB to seek an injunction, it must find (1) "reasonable cause" to believe an unfair practice has been or will be committed; and (2) that injunctive relief is "just and proper." (*County of San Mateo* (2019) PERB Order No. IR-61-M, p. 4, citing *Public Employment Relations Bd. v. Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881, 895-896.)

Because we find that it was appropriate for the County to have merged the former Verity employees into the County's existing unit structure, there is no reasonable cause to believe the County has committed or will commit an unfair practice as alleged in the charge, and we need not further consider whether injunctive relief might otherwise be just and proper. Accordingly, we deny CNA's request for injunctive relief.

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the complaint and underlying unfair practice charge in Case No. SF-CE-1648-M are DISMISSED. The California Nurses Association's request for injunctive relief is DENIED.

Members Krantz and Paulson joined in this Decision.