STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:

UNIT DETERMINATION FOR TECHNICAL EMPLOYEES; CLERICAL EMPLOYEES; SERVICE EMPLOYEES; PROFESSIONAL SCIENTISTS AND ENGINEERS, LAWRENCE LIVERMORE NATIONAL LABORATORY; PROFESSIONAL LIBRARIANS; AND PROFESSIONAL PATIENT CARE EMPLOYEES OF THE UNIVERSITY OF CALIFORNIA; PURSUANT TO CHAPTER 744 OF THE STATUTES OF 1978 (HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT)	Case Nos. SF-RR-1002 et al. SF-PC-1001 et al. Requests for Reconsideration and Judicial Review PERB Decision Nos. 241-H and 244-H thru 248-H PERB Decision Nos. 241a-H, 244a-H 245a-H, 246a-H 247a-H, 248a-H February 4, 1983

Appearances: Judith Droz Keyes and Jerrold C. Schaefer, Attorneys (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California; Marco Li Mandri for California Education Labor Organization.

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

DECISION

Following the issuance of PERB Decision Nos. 241-H and 244-H through 248-H on September 30, 1982, the Public Employment Relations Board (Board) received requests for reconsideration of those decisions from the University of California (University) and from the California Education Labor Organization (CELO), and a petition to join in request for judicial review from the University.

*Chairperson Gluck did not participate in this Decision.

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

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

Government Code subsection 3564(a) pertains to judicial review and states:

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

---

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

> extraordinary relief from the unit determination decision or order.

The Board has considered all submitted requests for reconsideration and the petition for judicial review. The University addresses two issues: one, technical errors in unit placement; and two, whether the Higher Education Employer-Employee Relations Act (HEERA)[2] requires a 30 percent showing of support by at least one employee organization before an election in an appropriate unit may be held. CELO asks for reconsideration of the Board's designation of systemwide units.

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

A. Technical Errors

The University has brought to the attention of the Board certain technical errors. These errors include the omission from seven of the eight unit determination decisions of an order concerning casual employees of the University. The Orders in PERB Decision Nos. 241-H and 244-H through 248-H are hereby amended to read:

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

---

[2]Government Code section 3560 et seq.

In accordance with the Orders in the above-referenced decisions, the remaining technical errors shall be corrected by the director of representation.

B. Proof of Support

The University also requests the Board to reconsider or join in requesting judicial review regarding whether HEERA requires a 30 percent showing of support by at least one employee organization before an election in an appropriate unit may be held. The request for reconsideration is granted. The Board finds that a 30 percent showing of support is required by HEERA before a directed election may be held. See the discussion in Unit Determination for Skilled Crafts Employees of the University of California (Reconsideration) (2/4/83) PERB Decision No. 242a-H. Accordingly, the Orders in PERB Decision Nos. 241-H (par. 4), 245-H (par. 5), and 248-H (par. 5) are hereby amended to read:

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

The Orders in PERB Decision Nos. 244-H (par. 4), 246-H (par. 4), and 247-H (par. 4) are hereby amended to read:

> The Board hereby ORDERS a representation election in this unit, provided that an employee organization has demonstrated or demonstrates at least 30 percent showing of

> support not later than March 15, 1983. The director of representation may seek an extension of this deadline from the Board for sufficient cause.

II. California Education Labor Organization: Request for Reconsideration

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

ORDER

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

1. The Orders in PERB Decision Nos. 241-H (par.(3)), 244-H (par. 2), 245-H (par. 3), 246-H (par. 3), 247-H (par. 3), and 248-H (par. 3) are amended to read:

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

2. The remaining technical errors brought to the Board's attention shall be corrected by the director of

representation, in accordance with the Orders in PERB Decision Nos. 241-H and 244-H through 248-H.

3. The Orders in PERB Decision Nos. 241-H (par. 4), 245-H (par. 5), and 248-H (par. 5) are amended to read:

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

4. The Orders in PERB Decision Nos. 244-H (par. 4), 246-H (par. 4), and 247-H (par. 4) are amended to read:

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

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

By the BOARD

the meaning of PERB rule 32410 and subsection 3564(a), respectively.

4. Paragraph 3 of the Order in PERB Decision No. 243-H is amended to read:

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

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

By the BOARD