

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



IN THE MATTER OF:)
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UNIT DETERMINATION FOR HOUSESTAFF) Case No.
EMPLOYEES OF THE UNIVERSITY OF) SF-RR-1002-H et al.
CALIFORNIA PURSUANT TO CHAPTER 744) PERB Decision No. 306-H
OF THE STATUTES OF 1978 (HIGHER)
EDUCATION EMPLOYER-EMPLOYEE RELATIONS) May 5, 1983
ACT))
_____)

Appearances: Franklin Silver, Attorney (Beeson, Taylor, Kovach & Silbert) for University of California at Davis Association of Interns and Residents, San Francisco Interns and Residents Association, and University of California at Irvine Interns and Residents Association; Kent Jonas and Judith Droz Keyes, Attorneys (Corbett, Kane, Berk and Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

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

DECISION

The Higher Education Employer-Employee Relations Act (HEERA or Act)¹ is a comprehensive collective bargaining act which gives the Public Employment Relations Board (PERB or Board) jurisdiction over the employer-employee relations of the University of California (UC or university) and its employees,

¹The HEERA is codified at Government Code section 3560 et seq. All statutory references hereafter are to the Government Code unless otherwise specified.

including authority to determine the appropriate units for employees of UC.²

Pursuant to section 51100 of the PERB regulations,³ the Physicians National Housestaff Association filed certification petitions on behalf of the UC Davis Association of Interns and Residents and the UC Irvine Interns and Residents Association seeking separate units for medical housestaff⁴ employees at

²Subsection 3563(a) states:

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

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

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³PERB regulations pertaining to HEERA are codified at California Administrative Code, title 8, section 31001 et seq.

Section 51100 reads in part:

(a) Subject to the limitations expressed in Section 51140(b), a petition for certification pursuant to Government Code section 3575(c) by an employee organization wishing to be certified by the Board as the exclusive representative in an appropriate unit shall be filed with the regional office, . . .

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⁴The petitions described medical housestaff employees as "interns, residents and fellows, clinical and research." For the purposes of this decision, individuals described as such are referred to as "housestaff."

the UC Davis and UC Irvine Medical Centers and affiliated facilities. Thereafter, the Board issued Unit Determination for Employees of the Regents of the University of California (4/20/82) PERB Order No. Ad-114a-H, directing that hearings be conducted to determine the appropriate unit placement of residents and interns, and to determine exclusionary issues, including questions of managerial, supervisory, confidential or casual status.⁵ The order further indicated that at the conclusion of the unit placement and exclusionary hearings, the chief administrative law judge should submit the record, including parties' briefs, directly to the Board itself for final disposition.

At the unit determination hearing, the parties agreed upon and read into the record a stipulation creating a systemwide unit of housestaff employees, the details of which are discussed infra. The stipulation was entered without prejudice to the position of any party in unfair practice Case No. SF-CE-1-H which was then pending before PERB.⁶ The stipulation was forwarded to the Board for final acceptance or rejection.

⁵The order explicitly directed that no evidence should be taken on the employee-student status of residents and interns.

⁶The case has since been decided by the Board. (Physicians National Housestaff Association v. Regents of the University of California (2/14/83) PERB Decision No. 283-H.) The parties' stipulation was conditioned upon a finding that the individuals and classifications petitioned for were

The Board will approve a stipulation in a unit determination matter when the stipulation does not contravene the Act or established Board policies. Centinela Valley Union High School District (8/7/78) PERB Decision No. 62.

The Legislature mandated that the Board consider various criteria in determining an appropriate unit of employees for purposes of meeting and conferring under provisions of the HEERA. These criteria are set forth in section 3579 of HEERA which, in pertinent part, provides:

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

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

"finally found by the Board or by a competent jurisdiction to be employees of the university within the meaning of the Higher Education Employer-Employee Relations Act." [Emphasis added.] In Physicians National Housestaff Association, the Board did find that housestaff who are paid by the university while participating in a residency program at a clinic, institute or hospital owned or operated by the university are "employees" as defined by subsection 3562(f) of HEERA. Having made this finding, the Board has met the condition of the stipulation. It is therefore free to decide whether the stipulation creates an appropriate unit for housestaff employees.

educational or training requirements, and the extent to which the employees have common supervision.

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

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

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

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

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

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

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In structuring units of UC employees, the Board has sought to place employees with an internal occupational community of interest in an appropriate unit. The Board has considered the effect that various unit configurations would have on the meet and confer relationships in terms of both the employer's interest in efficient operation of the educational system and in terms of the employees' interest in effective representation. As stressed in the State of California employee unit determination decision and reiterated in the California State University and Colleges unit determination decisions:⁷

. . . unit determination criteria cannot be reviewed in isolation from one another; indeed, there is substantial interplay among the various criteria. Therefore, all of the factors involved in a given situation must be balanced against one another. The result of any such balancing process is that in a

⁷See Unit Determination for the State of California Pursuant to Chapter 1159 of the Statutes of 1977 (State Employer-Employee Relations Act) (11/7/79) PERB Decision No. 110-S; Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/22/81) PERB Decision No. 173-H and (11/17/81) PERB Decision No. 176-H.

particular factual setting some criteria are emphasized over others while in a different setting the weight given the same criteria may be altered.

By the terms of the stipulation discussed, supra, the housestaff unit is defined as follows:

- (1) The unit includes the job classifications of dental intern (2705), veterinary medicine intern (2714), dental resident (2727), pharmacy resident (2728), veterinary medicine resident (2730), post-M.D. I (2708), post-M.D. II, III, IV (2724) and chief post-M.D. officer (2725). These positions are collectively referred to as residents in the balance of this stipulation. All other classifications at the university are explicitly excluded from the unit.
- (2) The unit includes only those persons on the payroll of the university of California and working at a hospital owned and operated by the university, provided that residents on the payroll of the university working at the Veterans Administration Hospital located in San Francisco, California shall not be excluded from the unit under the provisions of this paragraph. Further, this stipulation shall be without prejudice to the position of any party as to whether residents at the San Francisco General Hospital or the Los Angeles County Harbor/UCLA Medical Center should be included in the unit if and when they are put on the payroll of the university.
- (3) All managerial, supervisory, confidential and casual employees within the meaning of HEERA are excluded from the unit. The parties understand that this stipulation is not determinative of the managerial, supervisory, confidential or casual status of any person in a classification listed in paragraph (1) above.

In support of the proposed unit, the parties stipulated to several factual matters. Uncontested stipulations of fact submitted by the parties are accepted as conclusive. The factual stipulations are as follows:

- (1) Incumbents in each of the classifications contained in the unit are receiving postgraduate training in a health care field through the university and its faculty. Such training occurs after these individuals have attained the professional degree which is one of the bases for licensure to practice their profession. Individuals in these classifications care for patients at hospitals owned and operated by the university and participate in the teaching of students in university schools which educate health care professionals.
- (2) Each of the classifications contained in the unit has a single systemwide pay rate established annually by the university systemwide administration.
- (3) These individuals are professional employees within the meaning of HEERA, in that the incumbents in each classification have received professional degrees prior to their entry into the classification. In the post-M.D. classifications, incumbents have received M.D. degrees. In the pharmacy classification, incumbents have received Pharm. D. degrees. In the veterinary medicine classification, incumbents have received D.M.V. degrees. In the dental classifications, incumbents have received either a D.D.S. or a D.M.D. degree.
- (4) The university operates five medical schools through which the post-M.D.s and chief post-M.D. officers participate in residency programs. The schools are part of the university of California at Los Angeles (UCLA), the

university of California at San Diego (UCSD), the university of California at San Francisco (UCSF), the university of California at Irvine (UCI), and the university of California at Davis (UCD). Each of these campuses has affiliated with a hospital⁸ which is owned and operated by the university and used as a site for residency programs. In addition, UCSF places medical residents on its payroll at the San Francisco Veterans Administration Hospital through a program integrated with the residency program on its own campus and in which medical residents are trained by members of the UCSF faculty.

- (5) The university operates one pharmacy school located at the UCSF campus. Pharmacy residents associated with that school are trained in university-owned and operated hospitals on the UCSF campus and in those owned and operated by the university and affiliated with the UCI and UCSD campuses.
- (6) The university maintains one veterinary school located on its UC Davis campus. Veterinary medicine interns and residents in the residency program at that school are trained in the veterinary hospital located on the Davis campus and in the university-owned and operated hospital associated with the Davis campus.
- (7) The university operates two dental schools, one each at its UCLA and UCSF campuses. Dental residents and interns associated with these schools participate in residency programs in the university-owned and operated hospitals located on each of the campuses.

⁸UC Davis also has a veterinary hospital.

- (8) As of October 1981, the classifications to be included in the unit had the following number of incumbents on the university payroll: dental intern (2705) had four incumbents; post-M.D. I (2708) had 415 incumbents; veterinary medicine intern (2714) had 13 incumbents; post-M.D. II, III, IV (2724) had 1,555 incumbents; chief post-M.D. officer (2725) had 42 incumbents; dental resident (2727) had 18 incumbents; pharmacy resident (2728) had 20 incumbents; and veterinary medicine resident (2730) had 50 incumbents.
- (9) Individuals in each of the classifications included in the unit receive no academic degree at the end of their training program but, instead, receive certificates indicating the period of their residency program and their completion of residency.
- (10) Individuals in the classifications included in the unit are uniquely scheduled to rotate among various services located at and included in university-owned and operated hospitals.
- (11) No deduction for social security is made from checks given to these individuals for their services nor are these individuals eligible for inclusion in the UC retirement system. Further, deductions are not made for unemployment insurance on their behalf.
- (12) Individuals in the classifications included in the unit receive no additional compensation beyond the salary described above for periods when they are on call to university-owned and operated hospitals.
- (13) Unlike any other health care professionals paid by the university at its owned and operated hospitals,

individuals in these classifications are selected by the faculty of the university on the basis of academic record and on the basis of their ability to profit professionally from the training involved in their residency programs.

In light of the parties' factual stipulations, the record is adequate to support the conclusion that a systemwide unit of housestaff employees is appropriate. Employees placed within this unit are subject to specially designed hiring criteria and training requirements. Incumbents in each of the proposed classifications must, as a condition of their employment, possess an advanced professional degree. Thus, they share skills, education and qualifications which are unique among university health-care employees. They are bound by the common goal of providing health services in university hospitals and, in so doing, are involved in a specialized manner with the university's basic public service mission. They are employed in university-owned and operated hospitals and therefore have similar working conditions, job duties, supervision and training. Moreover, they are subject to the same systemwide classification scheme, wage scales and compensation plan.

Subsection 3579 (c) of HEERA creates a presumption that all employees within an occupational group or groups should be included in a single representation unit unless there is a preponderance of evidence that such a unit would be inconsistent with the Act. The record reveals that employees

in the systemwide housestaff unit share a significant occupational community of interest. The grouping of employees on the payroll of the university and working at the hospitals indicated in the stipulation will both facilitate the collective bargaining process and promote the efficient operations of the university. Additionally, the systemwide housestaff unit will avoid fragmentation of employee groups and unnecessary proliferation of units.

Based on the foregoing facts and discussion, we conclude that a systemwide unit of housestaff employees who are on the UC payroll and employed at hospitals indicated in the stipulation is appropriate. We therefore adopt the stipulation of the parties.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

- (1) In accordance with the stipulation of the parties, a systemwide unit of housestaff employees is appropriate for the purpose of meeting and conferring in good faith pursuant to Government Code section 3560 et seq.
- (2) All managerial, supervisory, confidential and casual employees of the university shall be excluded from the unit. The status of casual employees shall be determined during the exclusionary phase of these proceedings.

- (3) Pending final determination by a court of competent jurisdiction that housestaff employees are employees of the university within the meaning of the Higher Education Employer-Employee Relations Act, no exclusionary proceeding or representation election is ordered in the unit.
- (4) Any technical errors in this ORDER shall be presented to the director of representation who shall take appropriate action thereon in accordance with this Decision.

By the BOARD.