

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN FRANCISCO INTERNS AND)
RESIDENTS ASSOCIATION/CALIFORNIA)
ASSOCIATION OF INTERNS AND)
RESIDENTS/SERVICE EMPLOYEES) Case No. SF-PC-1048-H
INTERNATIONAL UNION, AFL-CIO,)
) PERB Decision No. 993-H
)
Petitioner,)
)
and)
)
)
REGENTS OF THE UNIVERSITY OF)
CALIFORNIA,)
)
)
Employer.)
_____)

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Vincent A. Harrington, Jr., Attorney, for San Francisco Interns and Residents Association/California Association of Interns and Residents/Service Employees International Union, AFL-CIO; Hanson, Bridgett, Marcus, Vlahos & Rudy by Douglas H. Barton and Susan C. Barton, Attorneys, for Regents of the University of California.

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the San Francisco Interns and Residents Association/California Association of Interns and Residents/Service Employees International Union, AFL-CIO (SFIRA) of the PERB administrative law judge's (ALJ) denial of its petition for certification (attached hereto) of a bargaining unit of all housestaff employed in the training programs in clinical departments of the University of California, San Francisco.

The Board has reviewed the entire record in this case, including the proposed decision, transcript, exhibits, SFIRA's

appeal and the Regents of the University of California's response thereto. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The petition for certification filed in Case No. SF-PC-1048-H is hereby DISMISSED.

Chair Blair and Member Hesse joined in this Decision.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO INTERNS AND)	
RESIDENTS ASSOCIATION/CALIFORNIA)	
ASSOCIATION OF INTERNS AND)	Representation
RESIDENTS/SERVICE EMPLOYEES)	Case No. SF-PC-1048
INTERNATIONAL UNION,)	
)	
Petitioner,)	
)	
and)	PROPOSED DECISION
)	(4/6/92)
)	
REGENTS OF THE UNIVERSITY OF)	
CALIFORNIA,)	
)	
Employer.)	

Appearances: Van Bourg, Weinberg, Roger and Rosenfeld by Vincent Harrington, Attorney, for the San Francisco Interns and Residents Association/California Association of Interns and Residents/Service Employees International Union; Hanson, Bridget, Marcos, Vlahos & Rudy by Douglas H. Barton and Susan Barton, Attorneys; Office of the General Counsel by James Odell, Managing University Counsel, for the Regents of the University of California.

Before JAMES W. TAMM, Administrative Law Judge.

PROCEDURAL HISTORY

On November 29, 1990, the San Francisco Interns and Residents Association/California Association of Interns and Residents/Service Employees International Union (Petitioner) filed a petition for certification seeking a bargaining unit of all housestaff employed in the training programs in clinical departments of the University of California, San Francisco (UCSF). On January 11, 1991, the Regents of the University of California (UC or University) filed its response opposing the appropriateness of the requested bargaining unit. The University based its opposition upon an earlier decision of the Public Employment Relations Board (PERB or Board) which held that a systemwide bargaining unit of housestaff was appropriate. (In

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

the matter of Unit Determination for Housestaff Employees of the University of California (1983) PERB Decision No. 306-H (Housestaff #1)¹ pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act).²)

A settlement conference was held on February 25, 1991, however, the matter remained unresolved. Seven days of formal hearing were held between July 15 and October 8, 1991. After several party initiated continuances, briefs were filed and the case was submitted for decision on February 24, 1992.

ISSUES

(1) Is a bargaining unit limited to housestaff at UCSF appropriate?

(2) If a local UCSF bargaining unit is appropriate, should housestaff at hospitals not owned or operated by UCSF be included in the unit?

FINDINGS OF FACT

UCSF is one of five medical schools operated by the University. Within the UCSF medical school, various programs or departments offer residencies in different areas of study (e.g., pediatrics, surgery, anesthesiology, internal medicine, etc.). Each of the various programs or departments within UCSF operate with a great deal of autonomy.

¹**The** San Francisco Interns and Residents' Association was a party to this earlier decision.

²The Higher Education Employer-Employee Relations Act (Act) is codified at Government Code Section 3560 et seq. Any statutory references are to the Government Code unless otherwise specified.

UCSF owns and operates two medical centers. The opportunity for housestaff to gain experience in a variety of environments with a diversity of patients and, expertise in various diagnostic or therapeutic procedures, is limited within UCSF owned and operated facilities. UCSF therefore arranges with other outside facilities, such as the Veterans Administration Hospital, San Francisco General Hospital or Childrens' Hospital, for housestaff to rotate through those facilities. These outside facilities are considered either "affiliated" or "integrated" with the UCSF medical school, depending upon the amount of involvement UCSF has in their operation. Virtually all programs at UCSF rotate housestaff through outside affiliated or integrated facilities, which are not owned or operated by UCSF.³

³The employee status of medical students while they are in rotation assignments in hospitals not owned or operated by the University was not resolved by Housestaff #1. The stipulations in that decision provided:

The unit includes only those persons on the payroll of the University of California and working at hospitals 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.

In Regents of the University of California v. Public Employment Relations Board (1986) 41 Cal.3d 601 [224 Cal.Rptr. 631], the Court upheld the Board's earlier determination that housestaff "who are paid by the University while participating in a

The programs throughout the UC system all receive accreditation pursuant to a national accreditation organization. The requirements for accreditation for individual programs are national in scope. Therefore, a pediatrics program at UC Davis will have similar minimum requirements to one at UCSF. Individual programs are, however, able to establish their own requirements for completion of a residency program above and beyond those national standards.

While program educational requirements are similar, working conditions may differ from medical school to medical school and program to program within each school. Most working conditions are controlled either at the systemwide level or at the program level. Very few conditions are determined at the medical school level. For example, salaries are set pursuant to a single systemwide salary schedule established by the University's systemwide administration. Disability insurance is another example of control by systemwide administration. When local housestaff chapters sought to negotiate disability insurance plans with individual medical schools, the medical schools did not have the authority from systemwide administration to develop individual plans. As a result, the housestaff organizations

residency program at a clinical institution or hospital owned or operated by the University" was an employee as defined by section 3562(f) of the Act. On remand from the Supreme Court (Regents of the University of California (1986) PERB Decision No. 283a-H), the Board referred to University affiliated hospitals in its decision. However, the term "affiliated" appears to have been used by the Board in a generic sense and not given the specialized meaning attributed to the parties in this current litigation.

developed their own plan unassociated with the University. There have also been some recent systemwide efforts to deal with the oppressive work hours of most housestaff.

Many other working conditions, such as on call assignments, meal allowances, vacation schedules, sleeping room availability, amount and types of support staff, rotation schedules, local float systems, needle stick policies, moonlighting arrangements, etc., are all determined by individual programs, rather than at the medical school level or systemwide.

The working conditions for housestaff at hospitals not owned or operated by UCSF are largely outside the control of the medical school administration. However, on occasion, program administrators have had some influence changing conditions at those hospitals.

The Petitioner has dealt with the UCSF labor relations administrators since at least 1981-82, over matters of concern to housestaff at the medical school. For the most part, however, the concerns raised were so localized to individual programs that the UCSF labor relations representatives lacked authority to resolve the issues. Petitioner has more successfully dealt with individual programs to attempt to resolve issues. Petitioner has had only minimal contacts with systemwide labor relations representatives on matters of concern to housestaff.

Allen Brill, Petitioner's Executive Director, testified that one of the Petitioner's goals, since at least 1986, has been to represent housestaff at all of the UC medical schools. To that

end, active chapters have been established at UC Irvine, UC Davis and UCSF. It has also initiated contacts at UC Los Angeles and UC San Diego.

Individual programs have great autonomy regarding admission requirements. Housestaff are accepted into programs through a National Resident Matching Program (NRMP). Through this matching process, medical schools and housestaff all rank their preferences, then NRMP tries to match housestaff preferences with medical school preferences. To that extent, various UC medical schools may compete with each other for the top students.

Remediation of individual performance difficulties on the part of housestaff is handled on an individual program basis. At UCSF, there is no common set of employee files for housestaff. Rather, applications, evaluations and individual performance assessments are maintained within the individual programs.

There is very little evidence of interchange among housestaff at various UCSF programs. There is even less evidence of interchange among housestaff at various UC medical schools.

DISCUSSION

The criteria for determining appropriate units is set forth in section 3579(a) of the Act. The statute requires consideration of numerous factors, such as community of interest, the effect the proposed unit will have on the meet and confer relationship, the efficiency of operations of the employer, compatibility with the obligation to serve students and the public, the objective of providing employees the right to

effective representation and the impact of fragmentation and proliferation of units.

Section 3579(c) also provides:

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.

In Housestaff #1, the Board concluded a systemwide unit was 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.

The Board's decision was based upon a number of factual stipulations entered into by the parties and accepted by the Board. There have been no significant changes to the stipulated facts since the time of the earlier hearing. While the doctrine of res judicata is not applicable and therefore does not bind the parties to the earlier holding, the earlier Board decision is certainly persuasive and entitled to great weight.⁴

In Regents of the University of California (1986) PERB Decision No. 586-H, the Board held that previous unit determinations are binding only to the extent that circumstances and Board precedent remain the same. In that case, the union demonstrated substantial changes in the duties and working conditions of the employees in question since the time of the

⁴In the State of California (Department of Personnel Administration) (1989) PERB Decision No. 727-S, the Board held that res judicata was not applicable in a unit determination proceeding based upon stipulations because it . . .

did not involve the regular type of civil or administrative action brought against a respondent-defendant party, and the judicial or administrative adjudication of a disputed issue in such an action.

earlier decision and was therefore granted a separate unit. In the case at hand, Petitioner has not been able to do that.

While Petitioner has amply demonstrated that a local unit is a viable unit, it has not overcome the presumption that a systemwide unit is more appropriate. In order to rebut the presumption of a systemwide unit, Petitioner must demonstrate by a preponderance of the evidence that a systemwide unit is inconsistent with the statutory unit criteria or the purposes of the Act. Faced with an earlier Board decision that a systemwide unit was, in fact, consistent with the Act, it would take a remarkable reversal of facts to demonstrate that such a unit was now inconsistent.

Although counsel for Petitioner makes strong arguments about the local nature of the issues that arise and the difficulty of assembling representatives from all the medical schools due to their work schedules, those arguments are countered to a great degree by the University's experience with other systemwide health care units. Both nurses and patient care technical employees are represented in systemwide bargaining units. Systemwide collective bargaining agreements contain systemwide standards for most items covered, but necessarily allow for local variations in implementation when the parties find it appropriate. For example, the agreements provide standards for bulletin boards, but placement of them is a local matter, as are such items as scheduling, shift assignments, and approval of vacation time.

Therefore, many of the program issues could be dealt with at a program level without the necessity of assembling statewide negotiating teams. Furthermore, if similar local housestaff units were created at each UC medical school, far more total time would be expended dealing with the same issues in five different sets of negotiations. A systemwide unit is also consistent with Petitioner's goal of representing all housestaff within the UC system.

CONCLUSION

Regardless of Petitioner's strong showing that a local UCSF unit would be viable, Petitioner has not demonstrated that the systemwide unit originally approved by the Board in Housestaff #1 is inconsistent with the statutory unit criteria or the purposes of the Act. The petition should therefore be dismissed. Because the petition is being dismissed, it is unnecessary to decide whether housestaff at non-University owned or operated hospitals are employees under the Act and/or should be included in a bargaining unit.


PROPOSED ORDER

Based upon the foregoing and the entire record in this case, IT IS ORDERED that the Petition for Certification filed in this case is DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20

days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code of Reg., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing" (See Cal. Code of Regs., title 8, sec. 32135; Code Civ. Proc., sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

Dated: April 6, 1992


James W. Tamm
Administrative Law Judge