

to address these issues. The acting Center Director's responsibility in that regard does not require independent judgment, but simply requires them to follow set procedures until the Center Director returns. Further, because the information provided during a licensing inspection is pre-arranged, it is related to work process and has nothing to do with personnel matters. Finally, there is no evidence regarding how frequently a Lead may be tasked with serving as acting Center Director. Accordingly, these functions do not confer supervisory status on the Lead when they serve as the acting Center Director.

L. Requests For Time Off

The Board has held that no supervisory status is found where the scheduling of vacations is “essentially ministerial, following a seniority system or other defined policy.” (*State of California, supra*, PERB Decision No. 110c-S, at p. 14; see also *LLNL, supra*, PERB Decision No. 246b-H at p. 23 [same].) Nor is there supervisory status where the authority to approve or deny sick leave is based on well-defined departmental standards. (*Ibid.*) Routine granting of time off without the use of independent judgment is a ministerial function which precludes a finding of supervisory status. (See e.g., *Lincoln Unified School District (1997)* PERB Decision No. 1194, adopting Proposed Decision at p. 40.)

Vacation and other leaves for non-Leads are governed by the parties' MOU and are not subject to change. Leads have no involvement in approving vacation, sick leave or other time off requests. All such requests go directly to the Center Director who makes the decision without anyone else's input. In some classrooms, the core teachers will give the Leads a “heads up” but that is done out of professional courtesy and is not a requirement. Even if leave requests were directed to the Leads, there was no evidence to show that a Lead has ever possessed independent judgment to, for example, deny leave requests.

M. Grievance Form Naming Disputed Position As “Supervisor”

In 2014, Teamsters filed a grievance on behalf a bargaining unit employee that named a Lead as the unit member’s “immediate supervisor.” The University argues that there could be an inherent conflict if the Leads are included in the unit with employees they purportedly supervise. First, evidence that Teamsters named one Lead as a supervisor does not, by itself, mean those individuals meet the legal definition of “supervisors” under HEERA. And there is also no legal authority supporting the University’s contention. Secondly, even if Leads are labeled as supervisors in the grievance, the parties cannot divest PERB of its jurisdiction to determine whether employees are supervisors that are properly excluded by statute. (*Hemet Unified School District* (1990) PERB Decision No. 820, at pp. 4-5; *The Regents of the University of California* (1989) PERB Decision No. 722-H.) Finally, Leads are not involved in processing grievances, so even if they are named in a grievance, there is no conflict as there is no evidence that the University would be precluded from addressing such grievances (i.e., those filed against Leads) in accordance with the parties’ MOU.

N. Supervision Of Student Workers

The University argues that Leads supervise UCLA student workers because Leads are involved in assessing, hiring, evaluating, training, directing, and overseeing the work of student workers in the Leads’ classrooms.

The definition of an “employee” under HEERA is set forth in section 3562 subdivision (e), which provides, in part:

The board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of this chapter.

The University has not provided any evidence to show that student workers meet the definition of “employees” under this definition. For example, there was no evidence that the student workers’ services are unrelated to educational objectives or that their educational objectives are subordinate to their services.¹⁴ Under HEERA, a disputed position’s supervisory status is necessarily contingent upon whether they supervise other “employees” by performing the supervisory criteria specified in section 3580.3 (e.g., hire, discharge, discipline or direct.) Accordingly, due to this lack of evidence, it cannot be established that Leads are the supervisors of student workers under HEERA.

The student workers are also not in the bargaining unit. Even if the Leads were found to supervise the student workers, the Leads would not be in the same unit as employees they purportedly supervise. Therefore, there would be no conflict of interest if the Leads were included in the unit. Further, PERB has held that “supervising” non-bargaining unit members does not qualify as a supervisory function for exclusion from the bargaining unit. (*CSU, supra*, PERB Decision No. 173-H at p. 44 [supervising librarians are not supervisors when most supervise non-unit employees].)

Even if it were established that student workers are HEERA “employees,” PERB precedent does not support a finding of supervisory status. PERB has held that classroom teachers who oversee and direct activities of teachers’ aides in the classroom are not

¹⁴ Center Director Ballentine’s testified that the students “need to have a job to get their financial award on campus.” Additional testimony was provided that student must be enrolled at UCLA to qualify for work study; however, not all student workers are paid and instead some receive credits for their work. Although it appears the student employment is contingent upon their status as students, there is insufficient evidence to meet the remaining criteria under section 3562, subdivision (e).

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. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered “filed” when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered “filed” when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090, 32091 and 32130.)

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 Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)