STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ALLIANCE MORGAN MCKINZIE HIGH SCHOOL, Employer, and UNITED TEACHERS LOS ANGELES, Petitioner.	Case No. LA-RR-1292-E
ALLIANCE LEICHTMAN-LEVINE FAMILY FOUNDATION ENVIRONMENTAL SCIENCE & TECHNOLOGY HIGH SCHOOL, Employer, and UNITED TEACHERS LOS ANGELES, Petitioner.	Case No. LA-RR-1293-E PERB Order No. Ad-491 March 23, 2022

Appearances: Sheppard, Mullin, Richter & Hampton by Karin Dougan and Valerie E. Alter, Attorneys, and Robert A. Escalante, General Counsel, for Alliance Morgan McKinzie High School and Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School; Bush Gottlieb by Erica Deutsch and Dexter Rappleye, Attorneys, for United Teachers Los Angeles.

Before Banks, Chair; Shiners, Krantz and Paulson, Members.

DECISION

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal of an administrative determination by Alliance Morgan

McKinzie High School (Morgan McKinzie) and Alliance Leichtman-Levine Family Foundational Environmental Science High School (Leichtman-Levine) (collectively, Charter Schools). Charter Schools are two of approximately 25 schools within the Alliance College-Ready Public School charter school network (Alliance Network). On April 9, 2019, UTLA filed two petitions seeking recognition as the exclusive representative of two separate bargaining units at the Charter Schools.

Finding that UTLA had provided proof of majority support at each Charter School, PERB's Office of the General Counsel (OGC) issued an administrative determination directing the Charter Schools to either recognize UTLA or explain why the petitioned-for units are not appropriate. Charter Schools stated that individual school bargaining units were not appropriate and that only a Network-wide bargaining unit is appropriate. Based on *Alliance Judy Ivie Burton Technology Academy High, et al.* (2020) PERB Decision No. 2719 (*Alliance I*), where we considered and rejected the argument that the only appropriate unit configuration is Network-wide, OGC rejected the Charter Schools' arguments and granted UTLA's petitions certifying UTLA as the exclusive representative of the Charter Schools' certificated employees.[1]

The Charter Schools timely appealed OGC's determination. For the reasons explained below, we find UTLA petitioned to recognize appropriate bargaining units,

[1] Approximately one year before UTLA initiated the petitions at issue here, it had filed separate petitions seeking recognition at three other Alliance Network schools, and the Board resolved the three earlier petitions in *Alliance I*. When UTLA filed its first three petitions, as well as when it filed the two petitions at issue here, each Alliance school was a separately incorporated corporation that contracted for services with the Alliance Charter Management Organization (Alliance CMO), a private nonprofit corporation.

and therefore certify UTLA as the exclusive representative of certificated employees at Morgan McKinzie and Leichtman-Levine.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On April 9, 2019, UTLA filed two petitions for recognition (Petitions) with PERB seeking recognition as the exclusive representative of two separate bargaining units of certificated employees at Morgan McKinzie and Leichtman-Levine. Along with the Petitions, UTLA provided OGC with proof of majority support from employees at both schools.

On May 7, 2019, OGC issued an administrative determination that UTLA had submitted sufficient proof of support for each proposed bargaining unit. The administrative determination advised the Charter Schools that, because UTLA evidenced majority support and no valid intervention had been filed, the Charter Schools were required to recognize the proposed bargaining units unless they doubted the appropriateness of the units.

On May 13, 2019, the Charter Schools denied recognition in both cases, asserting that all Alliance Network schools operate as a single employer and that, pursuant to the statutory presumption set forth in Educational Employment Relations Act (EERA) section 3545, subdivision (b)(1), the presumptively appropriate unit was a

[2] These factual findings are based on this case file, along with the case files in *Alliance I*, *supra*, PERB Decision No. 2719 and *Alliance Judy Ivie Burton Technology Academy High, et al.* (2022) PERB Decision No. 2809 (*Alliance II*). PERB may take administrative notice of its own records and files. (*Bellflower Unified School District* (2017) PERB Decision No. 2544, p. 6, citing *Santa Clara County Superior Court* (2014) PERB Decision No. 2394-C, p. 16 and *Antelope Valley Community College District* (1979) PERB Decision No. 97, p. 23.)

Network-wide bargaining unit.[3] Arguing that UTLA had not rebutted this presumption, the Charter Schools stated that the requested single school units were inappropriate. The Charter Schools requested that PERB investigate this issue pursuant to section 3544.5 and hold a hearing on the matter. On May 31, 2019, by agreement of the parties, the Petitions were placed in abeyance pending the Board's issuance of a decision in *Alliance I*.

Before January 1, 2020, each charter school within the Alliance Network was separately incorporated as a nonprofit public benefit corporation, and each had a separate board of directors, articles of incorporation, and bylaws. Each individual corporation held a separate charter with the Los Angeles Unified School District (LAUSD) to operate within the District's boundaries. Effective January 1, 2020, the Alliance Network schools and the Alliance CMO reorganized into a single entity referred to as Alliance College-Ready Public Schools. The Charter Schools are now centrally governed by a single Board of Directors and by the same officers.

On May 18, 2020, we issued *Alliance I*, *supra*, PERB Decision No. 2719. In *Alliance I*, we took administrative notice of the records in several unfair practice cases filed before UTLA filed the representation petitions.[4] In litigating these charges, Alliance CMO and Alliance Network schools vigorously disputed that the schools were part of an integrated operation, and made statements that were inconsistent with later

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[3] EERA is codified at Government Code section 3540 et seq. All further statutory references are to the Government Code unless otherwise specified.

[4] We took administrative notice of the files in PERB Case Nos. LA-CE-6061-E, LA-CE-6073-E, LA-CE-6165-E, and LACE-6204-E.

claims at the representation hearing regarding their alleged integration. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 2, fn. 3.) We considered and rejected the Alliance Network schools' argument that they constituted a single employer and that the only appropriate unit was a Network-wide unit.[5] (*Id*. at pp. 35-49.)

We explained multiple bases for this holding, each of which was sufficient to independently support the decision. Two of the rationales explained in *Alliance I*, *supra*, PERB Decision No. 2719, relied, in part, on the schools' corporate documents and their prior representations regarding their individual autonomy. Specifically, we found that this evidence: (1) warranted application of judicial and equitable estoppel, since UTLA had relied on Alliance Network schools' past positions when deciding to organize on a school-by-school basis; and (2) rendered Alliance Network schools' arguments unpersuasive. (*Id*. at pp. 37-49.)

When the petitions were filed, each school's charter declared:

> "[The Charter School] is deemed the exclusive public school employer of all employees of the charter school for collective bargaining purposes. As such, Charter School shall comply with all provisions of the Educational Employment Relations Act ('EERA'), and shall act independently from LAUSD for collective bargaining purposes. In accordance with the EERA, employees may join and be represented by an organization of their choice for collective bargaining purposes."

[5] We noted in our decision that "[t]he hearing to determine the appropriateness of the petitioned-for units focused almost exclusively on the Charter Schools' contention that, together with the other Alliance affiliated schools, they constitute a single-employer, and that the only appropriate unit must encompass all teachers and counselors within this network." (*Alliance I*, *supra*, PERB Decision No. 2719, p. 8.)

Each school's Administrative Services Agreement (ASA) with the Alliance CMO provided that the CMO supplies back-office support to the schools. Each ASA also stated:

> "Alliance and the School are independent contractors. No representations or assertions shall be made or actions taken by either party that would create any agency, joint venture, partnership, employment or trust relationship between the parties with respect to the subject matter of this Agreement. Except as may be expressly agreed upon in this Agreement or on a Schedule, neither party has any authority or power to enter into any agreement, contract or commitment on behalf of the other, or to create any liability or obligation whatsoever on behalf of the other, to any third person or entity."

With respect to employees, each ASA provided:

> "Each party will exercise day-to-day control over and supervision of their respective employees, including but not limited to hiring, evaluation, promotion, demotion, compensation, employee benefits, discipline and discharge. All work assignments instruction, scheduling, staffing and direction of the School employees shall be the exclusive province of the School. Each party is responsible for obtaining and maintaining worker's compensation coverage and unemployment insurance on its employees."

Finally, each Alliance Network school was separately incorporated under materially identical articles of incorporation that listed Alliance CMO's address as each school's corporate address for service of process and provided that each school is to be "operated, exclusively to support The Alliance for College-Ready Public Schools." (*Alliance I*, *supra*, PERB Decision No. 2719, p. 10.)

In *Alliance* I, we exhaustively reviewed the above documents and how information and argument the schools provided in multiple PERB past proceedings

undercut their claim that a single, Network-wide bargaining unit was the only allowable unit structure.[6] Among other inconsistencies, we note the following:

- At hearing in *Alliance I*, *supra*, PERB Decision No. 2719, the Alliance Network schools argued that the Network was a single employer and a functionally integrated operation. (*Id*. at p. 9.) However, in other cases, Alliance CMO and various Alliance Network schools vigorously disputed that the schools were part of an integrated operation or single employer enterprise. (*Id*. at p. 14.) For instance, in the declaration of Alliance CMO senior employee Howard Lappin filed in *Alliance College-Ready Public Schools* (2017) PERB Decision No. 2545, he claimed that while Alliance CMO offered certain administrative services, "[a]side from and except for this high-level support, the Charter Schools have substantial autonomous authority for all aspects of their daily operations, and exercise that authority independent of Alliance [CMO]" and "the administrators and [boards] of the Charter Schools are responsible for all aspects of the schools' day-to-day operations."[7] (*Alliance I*, *supra*, PERB Decision No. 2719, p. 14.)
- In *Alliance I*, *supra*, PERB Decision No. 2719, some Alliance Network schools averred that Alliance CMO controls labor relations and leads a centralized

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[6] For a more detailed explanation of the inconsistencies, see *Alliance I*, *supra*, PERB Decision No. 2719 at pages 9 through 22.

[7] On January 23, 2018, Alliance CMO's Chief Advancement Officer, Catherine Suitor, e-mailed all teachers at every Alliance Network school announcing the "Good News!" that in *Alliance College-Ready Public Schools*, *supra*, PERB Decision No. 2545, "PERB upheld Alliance's decentralized school network model that recognizes the autonomy of local Alliance schools."

management that governs the entire Network. (*Id*. at p. 16.) The schools further claimed that each principal answers to Alliance CMO, and while they may provide input regarding matters such as the academic calendar and employment agreements for other staff, the ultimate decisions over such matters are left to Alliance CMO CEO Dan Katzir or his designees. (*Ibid*.) This did not align with contentions in prior cases that "each School, *not* Alliance [CMO] . . . Determines the number, credentials and areas of expertise of the teachers and counselors to be hired by the School . . . Maintains sole control over fiscal planning decisions and decisions concerning expenditures in every area of School operations, including salaries, benefits, textbooks, classroom technology, classroom supplies, building maintenance, and security . . . Determines non-State mandated class offerings . . . Determines whether to incorporate technology in the classroom, how to incorporate it and what type of technology to rely upon . . . Decides what vendors or providers to use for the vast amount of services . . . [and] Determines the composition of its internal leadership team, which is involved in making most, if not all" of these decisions. (Italics in original.)

- In *Alliance I*, *supra*, PERB Decision No. 2719, Alliance Network schools contended that the CMO is responsible for formulating job descriptions, employment agreements, calendars, and salary schedules for all employees within the Alliance Network. (*Id*. at pp. 16-17.) Alliance Network schools also contended that the Alliance CMO maintains an employee handbook for all schools within the Network that controls working conditions throughout the

Charter Schools. (*Id*. at p. 17.) While these claims are contrary to the ASAs above, they also do not align with claims in prior cases that "each School, *not* Alliance [CMO] . . . Determines the number, credentials and areas of expertise of the teachers and counselors to be hired by the School . . . [and] Maintains sole control over fiscal planning decisions and decisions concerning expenditures in every area of School operations, including salaries, benefits, textbooks, classroom technology, classroom supplies, building maintenance, and security . . ." (Italics in original.)

- In *Alliance I*, *supra*, PERB Decision No. 2719, Alliance Network schools claimed that while principals have authority to impose discipline less than a suspension or termination, Alliance CMO staff are involved before suspending or firing an employee. (*Id*. at p. 18.) However, these contentions were contradicted in prior cases when Alliance Network schools claimed that "each School, *not* Alliance [CMO] . . . Makes all teacher and counselor hiring, firing and disciplinary decisions." (Italics in original.) Also, when litigating *Alliance College-Ready Public Schools*, *supra*, PERB Decision No. 2545, Alliance CMO argued to the ALJ that "[i]t is without question that core employment decisions concerning the hiring, discipline and firing of teachers and counselors, as well as decisions regarding teacher and counselor evaluations and contract renewals are made at the school level." (*Alliance I*, *supra*, PERB Decision No. 2719, p. 19.) Furthermore, no principal is involved in the discipline of another school's employees. (*Id*. at p. 18.) Likewise, if a school reaches a

settlement with an employee regarding discipline, such information is not shared with other schools within the Alliance Network. (*Ibid*.)

- In *Alliance I*, *supra*, PERB Decision No. 2719, Alliance Network schools contended that the CMO established roughly consistent salaries throughout the Network, along with setting stipend ranges for extra duties. (*Id*. at p. 17.) This is not aligned with claims from prior cases, where Alliance CMO contended that principals have substantial discretion to award bonuses without approval from the Alliance CMO's human resources department, and are free to depart from the supposedly centralized, consistent salary schedule in order to match a teacher's past salary – decisions not requiring the Alliance CMO's approval. (*Id*. at p. 21.)
- In *Alliance I*, *supra*, PERB Decision No. 2719, one English language coach and three psychologists were shared among the entire Alliance Network while they maintained one employment contract with their home school and the home school was reimbursed on a pro rata basis. (*Id*. at p. 19.) Otherwise, there was no employee interchange. (*Id*. at pp. 18-19.) In other cases, Alliance Network schools contended that teachers work only at the school where they were hired, and they have only one contract within the Network "with no interchange of personnel with either Alliance or any other school."

Ultimately, we found that the Alliance Network schools in *Alliance I* had failed to demonstrate that a Network-wide bargaining unit was the only appropriate unit configuration. (*Id*. at pp. 45-51.) This was, among other reasons, because their past

inconsistencies damaged the persuasiveness of their contentions in *Alliance I*, and the schools offered no adequate explanation for their inconsistencies. (*Id*. at pp. 45-49.)

Because the individual certificated bargaining units at each school were an appropriate configuration, we certified UTLA as the exclusive representative of certificated employee units at Alliance Judy Ivie Burton Technology Academy High, Alliance College-Ready Middle Academy No. 5, and Alliance Gertz-Ressler/Richard Merkin 6-12 Complex.[8]

Following *Alliance I*, on May 22, 2020, UTLA requested to remove the instant Petitions from abeyance and to be certified as the exclusive bargaining representative at the Charter Schools based on the reasoning in *Alliance I*. UTLA argued that collateral estoppel prevents the Charter Schools from relitigating the issues resolved in *Alliance I*. Subsequently, the parties, with the assistance of a PERB administrative law judge (ALJ), met to discuss the Petitions. The cases remained in abeyance pending these discussions.

On November 23, 2020, UTLA filed an unfair practice charge alleging that the three Alliance Network schools at issue in UTLA's first petitions had failed to recognize and bargain with UTLA as directed in *Alliance I*. While the Alliance Network schools maintained they were engaged in a technical refusal to bargain to obtain judicial review of the units certified in *Alliance I*, the schools also argued that the Network's January 2020 reorganization constituted changed or special circumstances rendering individual school units inappropriate.

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[8] We further address the legal conclusions of *Alliance I*, *supra*, PERB Decision No. 2719, below.

On November 24, 2020, UTLA again requested PERB remove the instant cases from abeyance and requested that UTLA be certified as the exclusive bargaining representative based on collateral estoppel. On December 9, 2020, the Alliance Network, on behalf of the Charter Schools, opposed UTLA's request on the ground that it did not meet the collateral estoppel elements. On December 11, 2020, UTLA replied to Alliance Network's opposition.

On April 28, 2021, OGC issued an Order to Show Cause as to why the Petitions should not be granted. On May 20, 2021, the Charter Schools responded to the OSC and filed a supporting declaration of Alliance Chief of Staff Zainab Ali. On June 11, 2021, UTLA filed a response in support of the OSC. On August 13, 2021, OGC issued an administrative determination granting the Petitions.

On February 28, 2022, we issued *Alliance II*, *supra*, PERB Decision No. 2809, reaffirming our unit determination in *Alliance I*. In so doing, we considered the allegation that the January 1, 2020 reorganization constituted changed circumstances rendering individual school units inappropriate. In *Alliance II*, the Alliance Network schools contended that the reorganization emphasized the Network's status as a single employer, requiring a Network-wide unit rather than individual school units. We found that the reorganization did not constitute sufficiently changed circumstances to warrant finding that a Network-wide bargaining unit is the only allowable unit structure.

DISCUSSION

I. A hearing is not required to determine the appropriateness of the petitioned-for units

The Charter Schools contend that a hearing is required to determine whether the petitioned-for units are appropriate. We disagree. PERB Regulation 33237, subdivision (a)[9] governs the investigation of representation petitions and provides:

> "Whenever a petition regarding a representation matter is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election or take such other action as deemed necessary to decide the questions raised by the petition."

Thus, there is "no guarantee or entitlement to an evidentiary hearing." (*Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-402, p. 16 (*Children of Promise*).) Rather, after completing an investigation, the Board agent may either "determine that sufficient evidence has been submitted to raise a material issue that necessitates an evidentiary hearing," or "that no material issue of fact exists and thus that a hearing is unnecessary." (*Id*. at p. 17.) "In reviewing whether a Board agent has conducted a proper investigation, the Board generally has looked at whether or not the Board agent abused his or her discretion." (*Id*. at p. 13.)

Here, the Board agent determined that UTLA had provided sufficient proof of support and informed the Charter Schools that they needed to either recognize UTLA as the exclusive representative of certificated employees at the Charter Schools, or dispute the appropriateness of the bargaining units. The Charter Schools argued that

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[9] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

the entire Alliance Network of charter schools constituted a single employer, and that the only appropriate bargaining unit consists of all certificated employees at all Alliance Network schools. The Charter Schools raised no other issues challenging the appropriateness of the petitioned-for units.

We find that the Board agent did not abuse her discretion by deciding the relevant issues without a hearing. We have already considered the issue of whether an Alliance Network-wide unit is the only appropriate unit configuration. Because this is the only argument presented by the Charter Schools as the basis for doubting the appropriateness of the bargaining units at issue, there is no material issue of fact and a hearing is not warranted. (*Children of Promise*, *supra*, PERB Order No. Ad-402, p. 17.)

Charter Schools argue that at a hearing we could receive evidence of its reorganization, which, it contends, emphasizes that Alliance Network schools comprise a single employer, and a Network-wide bargaining unit the only appropriate unit. In support of this contention, the Charter Schools filed the declaration of Alliance Chief of Staff Ali, detailing the reorganization. We disagree. First, we conduct our unit appropriateness inquiry based on the facts present when the petitions were filed. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 27, fn. 27, citing *Children of Promise*, *supra*, PERB Order No. Ad-402, p. 14.) Because the reorganization was not effective until January 1, 2020, about eight months after the subject petitions were filed, Charter Schools' argument exceeds the scope of our inquiry. Second, in *Alliance II*, *supra*, PERB Decision No. 2809, we considered the impact of the reorganization based on the parties' extensive stipulated record, in order to forestall the further uncertainty and

instability that could be created if Alliance Network schools were to file a unit modification petition based on its reorganization. (*Id*. at p. 24-28.)

For the reasons set forth in *Alliance I* and affirmed in *Alliance II*, and discussed further below, we need not hold another hearing in order to find that single school units are appropriate here. On appeal, the Charter Schools argue that collateral estoppel does not apply. The Charter Schools' arguments regarding collateral estoppel are not tenable given that the same parties already litigated the precise issue at stake, and there are no material factual differences. In the alternative, however, we have reviewed the parties' submissions de novo and find the petitioned-for units are appropriate based on the merits.

II. Single school bargaining units are appropriate

As noted above, our task when considering a petition for representation is to determine whether the petitioned-for unit is appropriate based on the facts present when the petition is filed. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 27, fn. 27, citing *Children of Promise*, *supra*, PERB Order No. Ad-402, p. 14.) The "petitioning union is not required to seek to represent only the 'most appropriate unit.'" (*Id*. at p. 24, citing *San Joaquin County Office of Education* (2004) PERB Decision No. JR-21, p. 4; *Antioch Unified School District* (1977) EERB Decision No. 37, p. 3.)[10] When performing this inquiry, we must weigh and balance the statutory criteria to achieve consistency of application and the general objectives of EERA. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 24, citing *Antioch Unified School District*, *supra*, EERB

[10] Prior to 1978, PERB was known as the Educational Employment Relations Board or EERB.

Decision No. 37, p. 3; *Marin Community College District* (1978) PERB Decision No. 55.) Among the statutory criteria, we must also take into account the purposes and goals of the Charter School Act (CSA) when deciding cases involving charter schools.[11] (*Alliance I*, *supra*, p. 24, citing *Orcutt Union Elementary School District* (2011) PERB Decision No. 2183, p. 5.)

When the appropriateness of a petitioned-for unit is at issue, EERA requires PERB to decide the question based on "the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district." (EERA, § 3545, subd. (a).) Section 3545 also "establishes a statutory presumption that all certificated employees of a 'public school employer' should normally be included in a single bargaining unit—the '*Peralta* presumption,' bearing the designation of our landmark decision in *Peralta Community College District* (1978) PERB Decision No. 77 (*Peralta*)." (*Alliance I*, *supra*, PERB Decision No. 2719, pp. 24-25.) This presumption may be rebutted based on the cumulative weight of three factors: community of interest, established practices, and employer efficiency. (*Id*. at p. 25, citing *St. HOPE Public Schools* (2018) PERB Decision No. Ad-472, pp. 4-5.)

When UTLA filed the petitions for representation, each school charter declared that it was the exclusive public school employer of the employees at the charter school for the purposes of EERA. (See Ed. Code, § 47611.5, subd. (b); EERA, § 3540.1,

[11] The CSA is codified at Education Code section 47600 et seq.

subd. (k) [defining "public school employer" to include an individual "charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code"].) Therefore, we deem each school a public school employer, and "to the extent it applies, the *Peralta* presumption largely favors school-by-school units." (*Alliance I*, *supra*, PERB Decision No. 2719, p. 25; see also *id*., p. 44, fn. 35 [because each charter school individually represented to the State of California that it was, by itself, a "public school employer," the charter schools carried the burden to overcome that representation].)

The Charter Schools argue that the Alliance Network schools constitute a single employer, which renders individual school units inappropriate. However, we explained in *Alliance I* why we have never applied the single employer doctrine to overrule a petitioning union and declare that a single employer unit is the only appropriate unit configuration:

> "Doing so would afford more weight to employer efficiency than to EERA's fundamental policy that '[p]ublic school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.' (EERA, § 3543, subd. (a).) The petition for recognition is the formal moment of genesis in our collective bargaining process; we cannot give effect to the right to representation and employee choice unless we accept and process the petitions actually filed by employee organizations. Therefore, our central inquiry is whether UTLA requested appropriate units of employees of the public school employers named in the petitions."

(*Id*. at p. 28.)

This is especially the case with charter schools, where we must consider the CSA's unique policy goals (Ed. Code, § 47611.5, subd. (d)), such as "[encouraging] the use of different and innovative teaching methods," "[creating] new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site," and "[providing] vigorous competition within the public school system to stimulate continual improvements in all public schools" (*id.*, § 47601, subds. (c), (d), and (g)). The wide variety of charter school structures in existence require us to certify a variety of unit configurations to keep CSA's goals of promoting innovation and competition within the school system from trumping EERA's goals of promoting fair collective bargaining. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 30.)

The record in *Alliance I* contains some facts that point to a community of interest existing beyond the walls of individual Alliance Network schools, such as Network-wide compensation and benefits, training, evaluation, and multiple policies and procedures. However, the record shows noteworthy differences between the Alliance Network and a school district, including employees' lack of transfer opportunities between schools, a lack of employee interchange except in unusual circumstances, and the significant authority each school appears to have over its day- to-day operations. As we noted in *Alliance I*, and briefly explain below, the Alliance Network schools' conflicting statements regarding certain policies and procedures make it difficult to assess some community of interest facts. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 32.) In these circumstances, as in *Alliance I*, we find that there is sufficient community of interest to support school-by-school units,

though record facts also exist that could support a Network-wide unit, had that been requested. (*Ibid*., citing *Lawson Mardon USA* (2000) 332 NLRB 1282, 1286 [finding employees at one location constitute an appropriate unit, even though many community of interest factors would also support comprehensive unit proposed by the employer, covering the full extent of a demonstrated single-employer enterprise].)

In *Alliance I*, Alliance Network schools argued that employer efficiency supported the argument that only a Network-wide unit was appropriate. While employer efficiency is relevant, it does not trump representational rights. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 33.) We further observed the potential "that possible efficiency is undercut by the schools' prior positions that they are autonomous, as well as by the fact that we have no jurisdiction over the Alliance CMO, the central entity in the alleged single-employer." (*Ibid*.) For that reason, employer efficiency—Charter Schools' strongest argument—lacks the strength that it would otherwise have in a traditional school context. We find the same analysis applies to the subject petitioned-for units in the Alliance Network.

The third and final factor we consider is established practices. As we noted in *Alliance I*, "the practice on which UTLA relied is established in the schools' declarations that each is an independent employer, the schools' individual charters, and the prior cases before PERB in which the schools strenuously asserted their autonomy." (*Alliance I*, *supra*, PERB Decision No. 2719, p. 33.) The representations made by schools in the Alliance Network were made prior to UTLA's filing these petitions, and UTLA justifiably relied on those representations when organizing at

Morgan McKinzie and Leichtman-Levine.[12] For these reasons, we find that the traditional factors make the petitioned-for bargaining units appropriate.

The inconsistencies that prevented Alliance Network schools from meeting its burden to demonstrate that the petitioned-for units are inappropriate in *Alliance I* have the same import here. While Alliance Network schools presented evidence in support of the argument that only a Network-wide unit is appropriate in *Alliance I*, we observed that the same facts were inconsistently presented in other PERB proceedings involving UTLA. For instance, in *Alliance I*, the charter schools contended that "operations of the Alliance Network are functionally integrated by both design and practice," contrary to Alliance Network longtime senior employee Lappin's declarations in prior cases that each school is designed to operate autonomously and without the direct involvement of Alliance CMO, which provided only high-level administrative support. (*Alliance I*, *supra*, PERB Decision No. 2719, pp. 35-36.) Similarly, in *Alliance I* the Alliance Network schools claimed that the Alliance CMO exerts Network-wide control over labor relations policies through its imposition of a "nonunion framework," uniform job descriptions, hours of work, performance standards, and discipline policies. (*Id*. at p. 36.) These claims are undermined by prior declarations and testimony that each Alliance Network school's principal and board had authority to set all significant employment policies, including hiring and firing decisions. (*Ibid*.)

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[12] Alliance argues that "UTLA could no longer have 'reasonably relied' on these pre-petition statements because, by the time of filing in April 2019, UTLA had received explicit notice from litigation in *Alliance I*." We disagree. Filing petitions was the culmination of a long period of gathering employee proof of support. Even if the schools reversed their factual and legal representations sometime during that period, this reversal did not require UTLA to turn on a dime and change its approach.

Moreover, in prior PERB cases the Alliance Network schools and the Alliance CMO denied the existence of any single-employer entity and supported their denials with sworn declarations representing that the charter schools were separate, autonomous entities, and that it would therefore offend due process to add them as named respondents in light of their denial of any single or joint employer status. (*Id*. at p. 38.)

When considering these inconsistencies in *Alliance I*, *supra*, PERB Decision No. 2719, we explained:

> "The combined records from these cases raise substantial questions regarding whether Alliance and its affiliated schools had the facts right then, now, or some of each. But we need not resolve these contradictions, because the burden belongs to the Charter Schools to show not only that they are part of a single employer construct, but also that the only appropriate unit subsumes all certificated personnel within the purported single employer. The self-contradicting set of factual representations the Charter Schools have made substantially impair them in making this case. Moreover, we conclude that finding school-by-school organizing to be categorically unavailable for Alliance teachers would be a manifest injustice, particularly given that Alliance schools have benefited from PERB rulings that took into account the schools' past factual representations regarding the schools' autonomy, and given that UTLA has also relied on those representations."

(*Id*. at p. 35.)

For these reasons, we find that the petitioned-for units at Morgan McKinzie and Leichtman-Levine are appropriate. Because UTLA has provided proof of majority support, we certify UTLA as the exclusive representative of the certificated units at Morgan McKinzie and Leichtman-Levine.

ORDER

Based on the foregoing and the entire record in this matter, the Public Employment Relations Board hereby ORDERS that the Requests for Recognition filed by the United Teachers of Los Angeles are GRANTED. It is hereby CERTIFIED that the United Teachers of Los Angeles is and has been the exclusive representative of employees of Alliance College-Ready Public Schools in the following units, retroactive to April 9, 2019, the date of the filing of the petitions in PERB Case Nos. LA-RR-1292-E and LA-RR-1293-E.

PERB Case No. LA-RR-1292-E (Alliance Morgan McKinzie High School)

INCLUDING: All certificated educational personnel including, but not limited to, certificated teachers; psychologists; counselors; social workers; ELD specialists; special education coordinators; education specialists; resource teachers; substitutes employees employed by the employer; and teachers holding other equivalent documents pursuant to Education Code section 47605, subdivision (l).

EXCLUDING: All other employees, including Management, Supervisory, and Confidential employees as defined in EERA section 3540.1.

PERB Case No. LA-RR-1293-E (Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School)

INCLUDING: All certificated educational personnel including, but not limited to, certificated teachers; psychologists; counselors; social workers; ELD specialists; special education coordinators; education specialists; resource teachers; substitutes employees employed by the employer; and teachers holding other equivalent documents pursuant to Education Code section 47605, subdivision (l).

EXCLUDING: All other employees, including Management, Supervisory, and Confidential employees as defined in EERA section 3540.1.

Members Krantz and Paulson joined in this Decision.

Member Shiners' dissent begins on page 24.

SHINERS, Member, dissenting: As explained in my dissent in *Alliance Judy Ivie Burton Technology Academy High School, et al.* (2020) PERB Decision No. 2719 (*Alliance I*), as of May 2, 2018, when UTLA filed the representation petitions in those cases, the Alliance-affiliated charter schools, including Alliance Morgan McKinzie High School and Alliance Leichtman-Levine Family Foundation Environmental Science High School (Charter Schools), constituted a single employer under *California Virtual Academies* (2016) PERB Decision No. 2484, and thus under *Peralta Community College District* (1978) PERB Decision No. 77, an Alliance-wide bargaining unit was the appropriate unit for Alliance's certificated employees. The Charter Schools have presented no evidence of any significant changes in the structure of the Alliance charter school network between May 2, 2018, and April 9, 2019, when UTLA filed the representation petitions in these cases. Consequently, for the same reasons stated in my dissent in *Alliance I*, the single-school bargaining units sought by UTLA are not appropriate, and I therefore would dismiss the petitions in these cases.