STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| In the Matter of<br><br>The Requests for Reconsideration and Judicial Review of 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)<br><br>UNION OF AMERICAN PHYSICIANS AND DENTISTS,<br><br>Employee Organization, PETITIONER,<br><br>and<br><br>THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES,<br><br>Employer, PETITIONER. | Case No. LA-RR-1001<br>LA-RR-1001-1<br>LA-RR-1001-2<br>LA-RR-1001-3<br>LA-RR-1002<br>LA-PC-1002<br>LA-IP-2<br><br>PERB Decision No. 173-H<br><br>PERB Order No. JR-ll-H<br><br>December 17, 1981 |

Appearances; Gary Robinson, Executive Administrator for the Union of American Physicians and Dentists; Mayer Chapman, Vice Chancellor and General Counsel, William G. Knight and Barbara E. Miller, Attorneys for The Trustees of The California State University and Colleges.

Before Gluck, Chairperson; Jaeger, Moore and Tovar, Members.

## DECISION AND ORDER

The Union of American Physicians and Dentists and the Trustees of the California State University and Colleges (hereafter Employer or CSUC) request that the Public Employment Relations Board (hereafter PERB or Board) reconsider several

aspects of its decision in the Unit Determination for Employees of the California State University and Colleges (9/22/81) PERB Decision No. 173-H. CSUC also petitions the Board to join in its request for judicial review pursuant to section 3564(a) of the Higher Education Employer-Employee Relations Act (hereafter HEERA).[1]

Both requests for reconsideration contain arguments that were raised in the litigation of the case above and point to no error of fact or law. The parties presented no new facts and none which this Board did not thoroughly consider in determining the professional units. The requests reveal that the petitioners simply disagree with the conclusions we have drawn from the evidence. Such disagreements and rearguments do

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[1]HEERA is codified at Government Code section 3560 et seq. Unless otherwise noted, all references are to the Government Code.

Section 3564(a) reads:

> 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.
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> Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

not constitute the "extraordinary circumstances" required by rule 32410.2 Accordingly, the requests for reconsideration are DENIED.

CSUC also requests permission to reopen the record for the purpose of giving additional evidence regarding the supervisory status of approximately 95 department chairs. While reopening the record would normally require proof of evidence not available or not admitted at the time of the hearing, the Board

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[2]PERB rules are codified at California Administrative Code, title 8, section 31000 et seq.

Rule 32410 states:

> (a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision with the Board itself within 10 days following the date of service of the decision. The request for reconsideration shall be filed with the Executive Assistant to the Board 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.
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> (b) Any party shall have 10 days from service to file a response with the Board itself. The response shall be filed with the Executive Assistant to the Board. Service and proof of service of the response pursuant to Section 32140 are required.
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> (c) The filing of a request for reconsideration shall not operate to stay the effectiveness of a decision of the Board itself unless otherwise ordered by the Board itself.

recognizes the complexity of the issues presented, the time constraints the litigants were under, and the fact that it was initially the Employer's position that all chairs should be excluded as supervisors.[3] In view of these circumstances, we direct that if CSUC challenges the voting eligibility of any or all of the 95 department chairs because of their alleged supervisory status, those challenged ballots will be resolved by the regional director whether or not they are determinative of the outcome of the election.

The California State University and Colleges' petition that the Board join in its request for judicial review is DENIED, there appearing no ground for considering this case one of "special importance" within the meaning of the Act.[4]

PER CURIAM

Member Tovar's concurrence and dissent begins on page 5.

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[3]The dissent contends that CUSC's position regarding student services classifications, like its position on department chairs, is that while the entire classification may not be supervisory, certain incumbents in the classification are. This incorrectly characterizes CSUC's request for reconsideration, since the employer continues to maintain the disputed classifications within the student affairs series are, in their entirety, supervisory. Thus, as to these classes CSUC is merely rearguing the position it took in the original unit hearing which this Board has rejected.

[4]See San Diego Unified School. District (10/27/81) PERB Order No. JR-10 and Livermore Valley Joint Unified School District (10/21/81) PERB Order No. JR-9. Though decided under the EERA, Government Code section 3540 et seq. , both statutes' pertinent provisions are identical.

Member Tovar Concurring and Dissenting:

I join in all aspects of the decision except that I would also direct that challenged ballots cast by allegedly supervisory employees in student affairs and two other classifications be resolved, whether outcome determinative or not, along with challenged ballots cast by department chairs.[5] The majority's decision to resolve department chair challenges but not others is, in my view, arbitrary and lacking any meaningful distinction. There is no significant distinction between these classes which warrants resolving challenges of departmental chairs but not challenges in the other classes. To the contrary, similarities exist which favor resolution of the status of supervisory employees in all classes which are not excluded in toto. Furthermore, PERB has a responsibility under the statute to ensure that supervisory employees are separated from rank and file employee activities and rights (section 3580 et seq.).

CSUC's request to reopen the record on department chairs states that the record lacks evidence which would lead PERB to exclude certain of them as supervisors. It cites language in PERB's own decision indicating that the record was "replete

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[5]The classifications are: Student Affairs Assistant III and IV, Supervising Student Affairs Assistant II, III and IV, Supervising Student Affairs Officer III and IV, Assistant Director of the Library and Supervising Registered Nurse III.

with contradictions and inconsistencies suggesting that both authority and procedures differ among departments and campuses." CSUC explains, as we note, that the presentation of complete evidence on all department chairs would have been extremely time consuming.[6]

CSUC presents a similar request regarding employees in the student affairs classes who may have supervisory responsibilities which would exclude them from the unit. CSUC notes that PERB has expressed uncertainty regarding the extent of supervisory duties of employees in these classes and acknowledges that the record regarding them was incomplete. AS with department chairs, CSUC explains that presentation of its original case at the PERB unit hearing was limited by practical considerations of time. Also, as with its request regarding department chairs, CSUC implicitly acknowledges that, in light of our unit decision, many of the employees in these classes are not supervisory. It requests, therefore, that PERB reopen the record to take additional evidence to identify certain employees in these classes who are supervisory, supervise other unit employees or who are supervisors a majority of the time,

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[6] CSUC does not contend that they are requesting to present evidence which was unavailable at the first hearing. The additional evidence it wishes to present focuses on the role and function of department chairs in relation to temporary, nontenure-track faculty. CSUC had taken the position that temporary employees should not be in the same unit as tenure-track employees (which department chairs are).

in the event we decline to reconsider our refusal to exclude these classes in toto.

Regarding the Assistant Director of the Library and the Supervising Registered Nurse classifications, CSUC's request suggests that the function of employees in these classes is not uniform on all campuses. As with the other classifications, additional evidence should be taken to identify employees in the class who may be supervisors.

In PERB Decision No. 173-H, I joined my colleagues in deciding not to exclude these disputed classifications in their entirety. It was my position, however, that individual employees in these otherwise rank and file classes might be supervisory employees, and that their status could be determined at a later proceeding. For example, as we explained in that decision regarding the Supervisory Student Affairs Assistant, "there is insufficient evidence that supervising student assistants <u>as a class</u> exercise any of the supervisory functions . . . to warrant their exclusion from the unit (emphasis added)." Thus, in my view, PERB has not precluded the subsequent finding that some student affairs assistants are supervisors. The limited scope of our decision is underscored by our amending our Order in the case. As first issue, the Order indicated the classifications included in each unit and that all <u>job classifications</u> found to be managerial, supervisory or confidential were to be excluded. Subsequently,

the order was amended to state "excluding all employees found to be . . . ." (emphasis added).

The posted PERB election order also states that supervisory employees in classes included in the unit are to be excluded. Although our order today directs only that the 95 department chair ballots are to be resolved, the University is presumably not precluded from challenging ballots of employees in the student affairs classifications in issue. Under PERB rules, however, the challenges would not be resolved unless they are outcome determinative. I favor resolving such challenges regardless of the election outcome.

Otherwise, the supervisory status of individual employees may be presented for resolution in another forum, without, in my view, our having made a prior determination as to individual employees.[3]

Irene Tovar, Member

3see Grossmont Union High School District (7/25/77) EERB Decision No. 11 and EERA section 3542(a) (2).