STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Employer, and STUDENT ASSOCIATION OF GRADUATE EMPLOYEES, U.A.W., UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, Petitioner.	Case No. SF-RR-813-H Request for Judicial Review PERB Decision No. 1301-H PERB Order No. JR-19-H February 9, 1999

Appearances: Cochran-Bond & Connan by Walter Cochran-Bond, Attorney, for The Regents of the University of California; Schwartz, Steinsapir, Dohrmann & Sommers by Margo A. Feinberg, Attorney, for Student Association of Graduate Employees, U.A.W., United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request by the Regents of the University of California (University) that the Board join in a request for judicial review of The Regents of the University of California (1998) PERB Decision No. 1301-H (Regents UCLA). In that decision, the Board concluded that students employed as graduate student instructors, readers, special readers, tutors, remedial tutors and part-time learning skills counselors at the University of California Los Angeles campus are employees as defined in section 3562(f) of the Higher Education

Employer Relations Act (HEERA).[1] Accordingly, pursuant to a request for recognition petition filed by the Student Association of Graduate Employees, U.A.W., United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, the Board determined that a bargaining unit made up of those positions is an appropriate bargaining unit, and ordered that a representation election be conducted.

DISCUSSION

HEERA describes the circumstances under which a party may obtain judicial review of a unit determination. HEERA section 3564(a) states:

> 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

---

[1] HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3562(f) states:

> "Employee" or "higher education employee" means any employee of the Regents of the University of California, the Directors of Hastings College of the Law, or the Board of Trustees of the California State University, whose employment is principally within the State of California. However, managerial, and confidential employees shall be excluded from coverage under this chapter. 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.

> 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.
>
> 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.

PERB Regulation 32500[2] states, in pertinent part:

> (a) Any party to a decision in a representation case by the Board itself may file a request to seek judicial review within 20 days following the date of service of the decision. An original and five copies of the request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance.
>
> (c) The Board may join in a request for judicial review or may decline to join, at its discretion.

The Board has applied a strict standard in reviewing requests for judicial review and evaluating whether cases are "of special importance" because the fundamental rights of employees to form, join and participate in the activities of employee organizations (HEERA sec. 3565) could be jeopardized if PERB's unit determinations were routinely subject to legal challenges. The Board has not agreed that the mere fact that a court has not ruled on an issue meets the "special importance" test, stating that "such would be an abdication of our responsibility to interpret the statute which we enforce and would tend to render

---

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

this Board simply another administrative hurdle to be cleared on the way to unit certification." (Livermore Valley Joint Unified School District (1981) PERB Order No. JR-9 at p. 5.) The Board has noted that its "considerable discretion in the determination of appropriate units is demonstrated by the very limited circumstances under which judicial review of its unit decisions may be obtained." (San Diego Unified School District (1981) PERB Order No. JR-10 at p. 4.)

Where a request for judicial review has been granted, the issue was found to be of special importance because: (l) it was a novel issue; (2) primarily involving construction of a unique statutory provision; and (3) was likely to arise frequently. (Los Angeles Unified School District/Lynwood Unified School District (1985) PERB Order No. JR-13 at p. 3; Palomar Community College District (1992) PERB Order No. JR-14 at p. 4.)

The Board recently considered the University's request that PERB join in seeking judicial review of the Board's determination that students employed as readers, tutors and associates at the University's San Diego campus are employees under HEERA section 3562(f). (Regents of the University of California (1998) PERB Order No. JR-18-H (Regents UCSD JR).) In denying the University's request, the Board noted that the issue of the status of student academic employees under HEERA section 3562(f) is not novel, having been dealt with by the appellate courts in Regents of the University of California v. Public Employment Relations Bd. (1986) 41 Cal.3d 601 [224 Cal.Rptr. 631] and

Association of Graduate Student Employees v. Public Employment Relations Bd. (1992) 6 Cal.App.4th 1133 [8 Cal.Rptr.2d 275] rev. den. August 13, 1992. In Regents UCSD JR. the Board considered the University's assertion that judicial review would allow for the expeditious resolution of other pending request for recognition petitions involving the issue of the status under HEERA of student academic employees of the University, and stated:

> While the frequency with which an issue may be raised is one element of the Board's judicial review standard, frequency alone does not indicate special importance (State of California (Museum of Science and Industry) (1996) PERB Order No. JR-17-S at p. 5), particularly when the frequency results from the same party raising the issue in numerous cases. In fact, a representational issue which arises frequently may be the subject of numerous Board and/or court decisions, a circumstance which would tend to diminish the special importance of a subsequent case which raises that issue. In Unit Determination for Skilled Crafts Employees of the University of California (1983) PERB Decision No. 242a-H, the Board disagreed that an issue was of special importance because it was likely to arise in other unit determination cases in which requests for recognition petitions would be filed. [Regents UCSD JR at p. 7.]

The Board concluded that the University had not shown that the case was one of special importance and denied the request that PERB join in seeking judicial review.

In the instant request, the University repeats arguments considered by the Board in Regents UCSD JR. The University asserts that judicial review of Regents UCLA would obviate the need for extensive PERB hearings regarding the status under HEERA

of student academic employees at the other campuses for which request for recognition petitions are pending. The University also asserts that judicial review would allow appellate court resolution of a constitutional issue PERB lacks authority to address - whether HEERA coverage of certain student academic employees intrudes on the University's control over its core functions in violation of Article IX, section 9 of the California Constitution. Finally, the University points out that approval of its request is the more expeditious of the two means of obtaining judicial review described in HEERA section 3564(a).

The University's request does not meet the Board's standard for granting requests for judicial review. The fact that other request for recognition petitions pending at PERB may involve the issue of the status under HEERA of the University's student academic employees is insufficient to establish the special importance of the instant case for the reasons explained in Regents UCSD JR, quoted above. Also, as the Board explained in Regents UCLA, PERB has no authority to make the ruling the University urges with regard to the constitutional issue raised by the University. Consequently, the Board declines to conclude that Regents UCLA is a case of special importance justifying PERB joining in seeking judicial review based on that issue. Finally, since PERB's joining in seeking judicial review in all cases would likely result in the more expeditious of the two means of obtaining judicial review described in HEERA section 3564(a), that fact fails to demonstrate the special importance of this case.

ORDER

The request that the Public Employment Relations Board join in seeking judicial review of its decision in The Regents of The University of California (1998) PERB Decision No. 1301-H is hereby DENIED.

Members Dyer and Amador joined in this Decision.