



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Employer,

and

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, LOCAL 4811,

Petitioner,

and

UNIVERSITY COUNCIL-AMERICAN
FEDERATION OF TEACHERS,

Joined Party.

Case No. SF-UM-890-H

PERB Order No. Ad-525-H

March 17, 2025

Appearances: Schwartz, Steinsapir, Dohrmann & Sommers by Daniel E. Curry and Lovelace Lee IV, Attorneys, for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 4811; Leonard Carder by Pamela Allen and Jennifer Keating, Attorneys, for University Council-American Federation of Teachers.

Before Krantz, Paulson, and Krausse, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Joined Party University Council-American Federation of Teachers (UC-AFT) from an administrative determination issued by PERB's Office

of the General Counsel (OGC). In this determination, OGC found that over 100 Visiting Assistant Professors (VAPs) and Assistant Adjunct Professors (AAPs) working in Math Departments across the University of California (UC or the University) should be added to the Postdoctoral Scholars (PX) bargaining unit represented by Petitioner International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 4811 (UAW).¹

UC-AFT represents a systemwide bargaining unit comprised of academic personnel who are primarily engaged in instruction and who are not in UC's academic senate. In this decision, we refer to this as the IX bargaining unit.² UC-AFT's appeal urges that instead of placing Math VAPs and AAPs in the PX unit, we should either: (1) place them in the PX unit for their research duties but require UC to afford them separate appointments in the IX unit for their teaching duties, as UC does for other PX unit employees who engage in teaching; or (2) place them entirely in the IX unit.

UAW opposed UC-AFT's appeal, while UC neither responded to the appeal nor filed an appeal of its own.

For the reasons we proceed to explain, we place the Math VAPs and AAPs in the PX unit and decline to direct UC to provide them with separate appointments for their teaching duties. Furthermore, our unit modification order incorporates a proposal

¹ When this case began, a different local union affiliated with UAW represented the PX unit. On May 15, 2024, PERB amended the operative certification to reflect UAW's new local union structure.

² We use the name "IX unit" because the parties to this case have done so. In past decisions, we have referred to it as "Unit 18," the "Non-Senate Faculty (NSF) Unit," or the "Non-Senate Instructional Unit."

from UC that UAW has approved. As discussed further below, this proposal involves retitling the Math Department VAPs and AAPs as “Math Fellows,” thereby separating their classification from VAPs and AAPs in other UC departments.

FACTUAL AND PROCEDURAL BACKGROUND

I. UAW’s Petition, UC’s Response, and UAW’s Reply

On April 6, 2023, UAW filed a unit modification petition (Petition) pursuant to PERB Regulation 32781(a)(1).³ The Petition sought to add over 100 VAPs and AAPs to the PX unit, which currently comprises approximately 6,700 Postdoctoral Scholars and Fellows (collectively, “Postdocs”). Specifically, the employees at issue in the Petition comprise AAPs in the UC Los Angeles (UCLA) Math Department and VAPs in the Math Departments at UC Berkeley, UC Davis, UC Irvine, UC Merced, UC Riverside, UC San Diego, UC Santa Barbara, and UC Santa Cruz.⁴ Except where context dictates otherwise, we refer to the Math VAPs and AAPs as Math Fellows.

The Petition alleged that Math Fellows perform research and teaching, and are akin to Postdocs in that they: are non-tenure-track positions “intended for individuals who recently completed their doctoral degree”; do not undergo the academic merit review process; are ordinarily not permitted to serve as Principal Investigators; and “serve in temporary positions with fixed end dates which are intended to provide a

³ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

⁴ UC sometimes refers to Math Fellows as “Morrey Visiting Assistant Professors” at UC Berkeley, “Krener Visiting Assistant Professors” at UC Davis, “Stefan E. Warchawski Visiting Assistant Professors” at UC San Diego, and as “Hendrick Assistant Adjunct Professors” (among other titles) at UCLA.

program of advanced academic preparation and research training, under the direction and supervision of faculty mentors.” The Petition further alleged that UC often refers to Math Fellows as “postdocs,” including in correspondence and in University directories. UAW submitted proof of majority support with the Petition, even though PERB Regulation 32781(e) does not require such proof given that the Petition seeks to increase the size of the PX unit by less than 10 percent.

On May 12, 2023, UC opposed the Petition, arguing that Math Fellows do not share a sufficient community of interest with Postdocs and that the petitioned-for unit therefore is inappropriate under the Higher Education Employer-Employee Relations Act (HEERA).⁵ UC stated that the biggest differences between Postdocs and either VAPs or AAPs “are in the purpose and duties or function of the roles.” Specifically, VAPs and AAPs are in UC’s “Professor” series, and UC stated that it therefore expects them “to independently engage in teaching, research, and university and public service,” as set out in UC’s Academic Personnel Manual (APM). UC pointed to APM section 230, which states that “the Visiting prefix is used to designate one who is appointed temporarily to perform the duties of the title,” and that evaluation criteria for such an employee “shall be the same as for the corresponding regular title.” UC also pointed to a comparable provision for AAPs, found in APM section 280-10.

Accordingly, UC alleged that “teaching is of equal importance to research” for Math Fellows, and that they “spend roughly equal time between the two.” Beyond teaching and research, the final aspect of their function is service, which UC alleged

⁵ HEERA is codified at Government Code section 3560, et seq. Undesignated statutory references are to the Government Code.

“may include participating in department meetings, serving on department committees, and organizing seminar series.” However, UC acknowledged that Math Departments “keep the service expectation lighter” for Math Fellows, allowing them to focus on developing their research program and teaching skills.

UC contrasted these functions with those of Postdocs, who have neither teaching nor service requirements. Instead, Postdocs need only engage in research. And even as to research, UC alleged that VAPs and AAPs “are not hired to fulfill the research objectives of the grants of other faculty members,” and they are therefore different from Postdocs, who UC alleged are employed for that purpose. As a result, UC asserted, Postdocs “are classified as trainees” and “do not have much autonomy in establishing their research areas.”

Many Postdocs at UC never teach any classes. For those who do decide to teach, UC noted, they “must obtain approval” and such work is “outside the scope of the bargaining unit and *not* covered by the UAW collective bargaining agreement.” Thus, if approved to teach, “they must apply separately for a Lecturer position [in the IX unit], which has distinct terms and conditions of employment.” If they are successful in obtaining such a Lecturer position, their Postdoc appointment “must be reduced accordingly for the duration of the teaching appointment.” Moreover, when Postdocs teach, their course load is usually no more than one course per year, which is lower than Math Fellows’ course load. This difference, UC explained, matches a difference

in qualifications: Postdoc applicants must submit only a research statement, while Math Fellow applicants must submit both research and teaching statements.⁶

UC urged OGC not to place weight on the fact that colleagues often refer to Math Fellows as “postdocs.” UC acknowledged that the two employee groups “share a common nickname,” but explained that “people in academe may use the word ‘postdoc’ to refer to individuals who have completed doctorates and are employed by a university as researchers and/or instructors on a temporary, non-tenure track basis.” UC continued, “this colloquial use of the term ‘postdoc’ is much broader than the definition of a ‘Postdoctoral Scholar’ represented by [UAW].” This semantic overlap is not important, according to UC, given the distinct role of Postdocs vis-a-vis Math Fellows. “Most importantly,” UC reiterated, “while *some* Postdoctoral Scholars *may* teach one course per year (and have their Postdoctoral Scholar appointment reduced accordingly),” Math Fellows “are *required* to teach three to four courses per year as part of their job duties.”

By letter dated May 15, 2023, OGC asked UAW to reply to UC’s opposition. OGC directed UAW to support factual assertions via declarations signed under penalty of perjury by competent witnesses with personal knowledge of all declared facts.

⁶ UC also cited employment terms that are often determined through collective bargaining for represented employees. However, PERB normally bases a community of interest determination on the inherent aspects of a position more so than employment terms and conditions that are changeable through collective bargaining. (*Merced City School District* (2024) PERB Decision No. 2901, p. 23 (*Merced*); *County of Monterey* (2022) PERB Decision No. 2821-M, p. 12 (*Monterey*); *Center Unified School District* (2014) PERB Decision No. 2379, p. 10; accord § 3579(a)(1).) For the sake of brevity, we do not recount the parties’ arguments regarding employment terms typically determined through collective bargaining, as they would not impact the outcome.

On May 30, 2023, UAW filed a reply and eight supporting declarations from Math Fellows. UAW raised both legal and factual arguments disputing UC's claim that Math Fellows have more in common with tenure-track faculty in UC's academic senate than with Postdocs. As a matter of law, UAW pointed out that HEERA section 3579(e) normally does not allow a unit that contains both academic senate members and nonmembers of the academic senate such as VAPs and AAPs. UAW also argued that PERB cannot place Math Fellows in their own bargaining unit without causing undue unit proliferation.

UAW further stated that UC was inaccurate in claiming that Postdocs lack autonomy in their research, compared to VAPs. Rather, UAW asserted, Postdocs in UC's Math Departments "have as much autonomy in their research as VAPs." Supporting that contention, UAW submitted a declaration from a Postdoc who stated that he has "a large degree of autonomy" over his research and he need not complete tasks under the direction of his supervising professor, but rather collaborates with the professor. Another declarant, UAW's President, stated that based on his experience at UC, as well as based on reviewing Postdoc appointment letters, he believed that Math Department Postdocs "have as much autonomy as their VAP counterparts" in their respective research projects. A third declarant, UC Berkeley Math Fellow Zhiyan Ding, attested that he is part of a research group that includes 10 Postdocs, and the supervising professor treats him the same as Postdocs, "except for the understanding that I spend some time teaching each week." Ding acknowledged, however, that this research group only accounted for half his research time, and that the other half of his research was in collaboration with a University of Wisconsin professor. Ding stated it

is his understanding that Postdocs in his research group also spend “some amount of time” on independent research.

UAW submitted declarations attesting to the fact that UC intends both Postdocs and Math Fellows to be early-career academics who have recently completed their doctoral degrees and are seeking to prepare for their careers via training and mentorship from UC faculty. UAW’s declarations also explained certain similarities in how UC hires and supervises Math Fellows and Postdocs.

Contrary to UC, UAW claimed that Postdocs “also must often perform service.” UAW’s examples, however, primarily came from outside mathematics, and the examples related to work that stands at the juncture of research and service. UAW submitted declarations stating that UC does not expect Lecturers to engage in service, and that while Math Fellows perform service, they “are often not invited or even informed about department meetings, and they can never serve on department committees.”

II. OGC’s First Order to Show Cause, UC’s Response, and UAW’s Reply

On June 2, 2023, OGC issued an Order to Show Cause (OSC). The OSC acknowledged differences between Math Fellows and Postdocs but also “substantial overlap” in their qualifications, functions, and working conditions. Based on this overlap, the OSC stated that the PX unit appeared to be “at least an appropriate unit” for Math Fellows, which would suffice to grant the petition pursuant to *Regents of University of California v. Public Employment Relations Bd.* (2020) 51 Cal.App.5th 159, 182 (*Regents v. PERB*). The OSC further explained that:

“To share a community of interest, employees’ work does not need to be identical. (*Kings County Office of Education*

(1990) PERB Decision No. 801, pp. 9-10.) Indeed, to hold otherwise would be to jettison the entire concept of a community of interest. (*San Diego Unified School District* (1981) PERB Decision No. 170, p. 5.) Community of interest rather turns on whether there are ‘fundamental similarities’ between the classifications in a proposed unit. (*Fairfield-Suisun Unified School District* (2017) PERB Order No. Ad-452, adopting administrative determination at p. 4.)”

In a later passage, the OSC continued:

“Significantly, the University does not identify any other unit to which VAPs would *more* appropriately belong. To the extent the University suggests that VAPs share a greater community of interest with employees in the Professor classification who are members of the Academic Senate, UAW correctly argues that HEERA requires Academic Senate members to be in a separate bargaining unit: ‘Notwithstanding the foregoing provisions of this section, the only appropriate representation units including members of the academic senate of the University of California shall be either a single statewide unit consisting of all eligible members of the senate, or divisional units consisting of all eligible members of a division of the senate.’ (§ 3579, subd. (e).)”

The OSC therefore tentatively concluded that OGC should grant the Petition, while affording UC an opportunity to show why that was not the case.

On July 3, 2023, UC filed its OSC response, together with seven supporting declarations. Although UC’s prior filing had focused on community of interest to the exclusion of most other arguments, UC’s OSC response broadened its arguments. For instance, noting that HEERA section 3579(c) includes a rebuttable presumption against dividing an occupational group, UC asserted that this presumption should bar PERB from placing Math Fellows in a unit without also placing other VAPs and AAPs in the same unit. As part of this argument, UC stated that across its entire system

there are 1,037 AAPs and 204 VAPs. However, UC acknowledged that different departments use these titles differently, and that Math Fellows are therefore “a unique, discipline-specific creation meant to address the needs of the departments and mathematicians.” UC gave one example of how different departments use VAPs differently, noting that a department may or may not hire VAPs who are truly “visiting” from another institution where they are tenure-track assistant professors. But UC pointed out that currently its policies treat VAPs the same irrespective of whether they have such a home institution.

Among the seven declarations UC submitted were six signed by math department chairs at six UC campuses. Half of these declarations asserted that research and teaching are an equal focus for Math Fellows, while half stated that teaching was more important.

UC also supplemented its prior arguments as to why Math Fellows and Postdocs play distinct roles in the academic mission. Citing multiple declarants, UC wrote: “Contrary to Petitioner’s assertions, the Mathematics Departments do not see VAP faculty members’ primary roles as research positions.” Rather, “their teaching contributions are equal to or more important than the research elements of the role.” By way of comparison, UC claimed that the same departments hire Postdocs “specifically and exclusively for their research skills, as that is purpose of their positions.” UC also reiterated that when Postdocs do teach, they do so under a separate teaching appointment in the IX unit. Whereas a Postdoc receiving such a second appointment will typically teach at most four courses in three years, a Math Fellow teaches nine or more classes in the same timeframe.

A declaration from UC Systemwide Director of Academic Personnel Kelly Anders noted that at UC, the term “faculty” refers to an academic who has “independent responsibility for conducting approved regular University courses for campus credit.” Anders further explained: “Only regularly appointed officers of instruction holding appropriate instructional titles may have substantial responsibility for the content and conduct of courses which are approved by the Academic Senate.” Thus, UC argued that VAPs, AAPs, and Lecturers have such a responsibility, while Postdocs do not, unless they obtain a separate instructional title, typically a Lecturer title in the IX unit.

While UC opposed placing Math Fellows in the PX unit, it also preemptively opposed placing them in the IX unit, because UC stated that it does not require employees in the IX unit to perform research. UC wrote that the Board’s past unit determinations have “recognized and upheld the distinction between two of the University’s primary functions—teaching and research.” UC urged that to continue this distinction, Lecturers should remain in the IX unit, Postdocs should remain in the PX unit, and PERB should exclude Math Fellows from both units, since they perform both research and teaching.

UC declarants described their concerns that inefficiencies could arise if PERB were to grant UAW’s Petition, as well as other concerns that might arise if PERB were to afford Math Fellows split appointments in both the PX and IX units. There is no cause to summarize most of these concerns, because the declarants wrongly assume that placing Math Fellows in the PX and/or IX units would automatically make their terms and conditions identical to those of Postdocs and/or Lecturers, ignoring that

those employment terms would in fact be subject to bargaining. However, UC declarants voiced one concern that would not be subject to collective bargaining: their belief that if PERB were to afford Math Fellows split appointments, doing so would make the overall Math Fellow role less prestigious, thereby causing UC to lose top candidates to peer institutions offering a unitary VAP opportunity.

By letter dated August 4, 2023, UAW replied to UC's response. UAW began by faulting UC for not taking any affirmative position as to what an appropriate unit placement for Math Fellows would be, creating an obstacle to their ability to achieve representation. UAW then reiterated its prior arguments as to why Math Fellows and Postdocs have a strong community of interest, as follows: "Both are early-career training positions for recent STEM doctorates seeking a career in academia. Both are short-term, full-time positions, typically lasting three years or less. Both receive mentorship and supervision from UC faculty members; neither receives merit pay increases nor promotions. Both require high-level research and service to the University. And while the University contends that Postdocs are not required to teach, it does not dispute that many choose to do so."

Finally, UAW denied UC's contention that the Petition, by placing only certain VAPs and AAPs in the PX unit, would divide an occupational group. UAW supported its argument by pointing to UC's concession that Math Fellows are "a unique, discipline-specific creation." According to UAW, this means they constitute a distinct occupational group. For instance, UAW argued that Math Fellows normally have no home institution, unlike most "traditional" VAPs, who visit from tenure-track positions at other institutions.

In September 2023, PERB placed this matter in abeyance to facilitate settlement discussions. PERB later extended the abeyance in December 2023 and February 2024, but UAW and UC failed to reach an agreement.

III. UC-AFT's Joinder

By letter dated March 19, 2024, UC-AFT stated that it had only recently learned of the Petition, and that it sought to intervene as a party.⁷ UC-AFT urged PERB to place Math Fellows in the PX unit for their research function while requiring UC to afford them separate appointments in the IX unit for their teaching function, thereby adopting the same practice UC follows for Postdocs. UC-AFT explained that for such split assignments, UC “notifies UC-AFT on monthly new-hire lists that such postdocs will be employed as lecturers for whom UC-AFT has representation rights and responsibilities.”

Further supporting its argument, UC-AFT pointed to *Unit Determination for Professional Non-Academic Senate Instructional and Research Employees of the University of California* (1982) PERB Decision No. 270-H (*Regents I*). There, the Board explained that it was considering appropriate unit placements for UC academic employees who were neither in the academic senate nor placed in units the Board had created for librarians and scientists/engineers at Lawrence Livermore National Laboratory. (*Id.* at pp. 3-4.) The Board affirmed the hearing officer’s finding that employee function deserved weight as a primary community of interest factor for crafting workable units, and that it therefore made sense to create one unit of

⁷ All further dates refer to 2024, unless otherwise noted.

employees “primarily” involved in teaching and a second unit of employees “primarily” involved in research. (*Id.* at p. 9.)⁸

By letter dated March 20, OGC afforded UC and UAW an opportunity to respond to UC-AFT’s filing. Both UC and UAW responded on April 4. UC’s response was brief, stating that it did not oppose UC-AFT joining the case as a party, and it remained “committed to finding a resolution that will address the petitioned-for employees’ expressed desire to be represented,” but it opposed affording Math Fellows split appointments.

In UAW’s response, it claimed UC-AFT improperly sought to join or intervene in the case “at the eleventh hour,” and it argued that UC-AFT’s proposal for split appointments would deny Math Fellows “effective representation.” (See § 3579(a)(4); see also, e.g., *Regents of the University of California* (2010) PERB Decision No. 2107-H, pp. 28-30 [adding all employees performing case management to health care professional bargaining unit, irrespective of the fact that they held a diverse set of classifications, furthered statutory objective of promoting effective representation] (*Regents III*).) Moreover, citing *Regents of the University of California* (2014) PERB Decision No. 2398-H, p. 4 (*Regents IV*), UAW argued that the IX unit “by definition may not include employees who have research as a required duty.”

⁸ The PERB-established unit of employees primarily involved in teaching is the IX unit. But the corresponding research unit never became represented, and in 1984 the Board divided it into a unit of academic research professionals and a unit of research support professionals. (*Unit Determination for Professional Non-Academic Senate Research Employees of the University of California* (1984) PERB Decision No. 270c-H, pp. 3-4 (*Regents II*).)

UAW further contended that Math Fellows oppose UC-AFT's split appointment proposal. To support this argument, UAW submitted a declaration from Shishir Agrawal, a member of the Math Fellows' organizing committee. Agrawal stated that the organizing committee unanimously opposed UC-AFT's split appointment proposal, for several reasons, including, Agrawal's characterization that a split appointment would not be "as highly regarded by hiring committees" in future job searches. Agrawal further stated that Math Fellows' "research and teaching responsibilities are quite intimately tied together in our jobs," and Math Fellows feel that they cannot "effectively negotiate" if they have split positions, as "it will become very unclear what aspects of our job are negotiated on which contract." For instance, Agrawal continued, it is unclear "through which contract would total pay be negotiated; whether our pay would vary from term to term depending on our course load; through which contract would we negotiate our course load; and whether we would be able to negotiate a lower course load without lowering pay even if we have split positions." In sum, he declared that Math Fellows "would rather have one contract so that we can negotiate the terms and conditions of our employment in one place, in a comprehensive and coherent way."

Agrawal's declaration also included the following claims: (1) while a "supermajority" of Math Fellows signed UAW authorization cards, UC-AFT never sought collect proof of support from Math Fellows; (2) To Agrawal's knowledge, "UC-AFT has never taken any initiative to meet with VAPs," and the "only time UC-AFT directly communicated with any Math VAPs" was during a February 2024 videoconference, which UAW set up; and (3) During the videoconference, Agrawal

told UC-AFT “all the reasons why VAPs are unionizing and why we do not want to ‘split’ our positions across two bargaining units.”

On April 15, OGC joined UC-AFT as a party to this case pursuant to PERB Regulation 32164. We affirm this conclusion. Although UC-AFT did not file its own unit modification petition, its March 19 filing set forth substantially the same information required to petition for unit modification under PERB Regulation 32781(d). Given that adding the Math Fellows would increase the IX unit by less than 10 percent, UC-AFT did not need to present proof of support before seeking to add the Math Fellows to that unit. (PERB Reg. 32781(e).) UC-AFT thus had a strong interest in ensuring that PERB, in processing UAW’s representation petition, did not mistakenly assign positions to the PX bargaining unit without UC-AFT’s participation in the case. Such an interest satisfies the standard set forth in Regulation 32164, as OGC found here.

IV. The Second OSC, the Parties’ Responses, and OGC’s Determination

On August 19, OGC issued a second OSC, which afforded UC and UC-AFT an opportunity to show cause why OGC should not grant UAW’s Petition. The OSC characterized the IX unit as a “teaching only” unit, citing *Regents IV*, *supra*, PERB Decision No. 2398-H and *Regents of the University of California* (2015) PERB Decision No. 2422-H (*Regents V*). In contrast, the OSC characterized the PX unit as merely “research-focused.” Based on these characterizations, as well as based on UC’s position that Math Fellows perform roughly equal components of teaching and research, the OSC tentatively found that the PX unit is “an appropriate unit” while the IX unit is not.

UC-AFT responded to the OSC on September 18. Among other assertions, UC-AFT suggested an alternate position as follows: “If the UAW and/or the University is unwilling to agree that the historical practice of making split appointments between the IX and PX units for employees engaged in both Postdoctoral research and Lecturer work should apply,” then “given the primary responsibility of the Math VAPs to engage in instructional work, they must be placed in UC-AFT’s IX Unit.”

UC also responded on September 18, continuing to oppose adding the Math Department VAPs and AAPs to the PX unit “because the Math VAPs’ primary job is serving as a faculty member, whereas the primary job for PX Non-Faculty Academic employees is research.” UC further argued that if PERB determines that the employees at issue are appropriately part of the PX unit, then “[t]he Regents respectfully requests the opportunity to transfer the Math VAPs to a new classification in order to accurately reflect the duties of these positions.” Specifically, UC proposed retitling the impacted employees as “Math Fellows.” Supporting this position, UC submitted a supplemental declaration from Anders stating that while Math VAPs and AAPs sit within systemwide classifications, she evaluated their duties and qualifications and found they “are not consistent with the general experience level and expertise” of other VAPs and AAPs. As a result, Anders declared, their “work may be more appropriately characterized as that of a Math Fellow, for which the University could create a new non-faculty classification.”

UAW replied on October 4. In addition to reiterating arguments that it had made at earlier stages of litigation, UAW responded to UC’s alternative suggestion to retitle the impacted employees as Math Fellows, writing: “The Union agrees with this

suggestion. Since its initial petition, the Petitioner has emphasized that the University has improperly labeled VAPs and AAPs in the Math Department. [citation omitted.] A new title, such as Math Fellows, would properly distinguish these short-term, early-career, trainee, postdoctoral positions. Consequentially, the Union and University appear to be almost fully aligned on the correct outcome of this petition.”

On November 5, OGC issued its administrative determination granting UAW’s Petition. OGC characterized the IX unit as “teaching only” and therefore indicated that the three parties had, between them, only suggested a single potential unit placement—the PX unit. Finding that to be an appropriate unit, OGC granted UAW’s Petition. This appeal ensued.

DISCUSSION

HEERA section 3579 lists the applicable unit determination criteria we must apply. Subdivisions (b), (d), (e), and (f) of section 3579 add special rules governing circumstances not at issue here. Accordingly, we focus on section 3579(a) and (c).

Section 3579(a) includes five overlapping sets of criteria, as follows:

“(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

“(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and

taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

“(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and the public.

“(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

“(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.”

While section 3579(a)(2) requires us to consider the impact of “dividing a single class or a single classification schematic,” section 3579(c) deals with dividing “an occupational group or groups.” Specifically, section 3579(c) creates a rebuttable presumption “that all employees within an occupational group or groups located principally within the State of California shall be included in a single representation unit,” unless “there is a preponderance of evidence that a single representation unit is inconsistent with the criteria set forth in [section 3579(a)] or with the purposes of [HEERA].”

In resolving a petition for certification, recognition, or unit modification, we normally approve a petitioner’s proposed unit if it would constitute an appropriate unit, even if it would not qualify as the most appropriate unit. (*Regents v. PERB, supra*,

51 Cal.App.5th 159, 182.) However, in this case our below analysis shows that both UAW and UC-AFT have proposed unit configurations that would be appropriate for Math Fellows, and we therefore must balance the criteria in HEERA section 3579 to determine which proposal is most appropriate.⁹

We proceed to summarize the main reasons why HEERA's criteria favor UAW's position on balance. We reach this result without remanding for an evidentiary hearing because there are sufficient undisputed facts that the remaining disputed facts would not be dispositive. (See, e.g., *Los Angeles County Metropolitan Transportation Authority* (2024) PERB Decision No. 2916a-T, pp. 6-7 [discussing how a Board agent should decide whether an evidentiary hearing is necessary].)

I. Anti-Fragmentation and Anti-Proliferation Principles

"Since its earliest days, PERB decisions interpreting both HEERA and other PERB-administered statutes have repeatedly sought to avoid fragmentation of employee groups and unnecessary proliferation of units." (*Regents of the University of California* (2017) PERB Order No. Ad-453-H, pp. 23-24 (*Regents VI*).) Thus, unit determinations normally favor larger units even though such units may include a broad array of diverse employees. (*Monterey, supra*, PERB Decision No. 2821-M, p. 11; *County of Santa Clara* (2019) PERB Decision No. 2670-M, p. 27 (*Santa Clara*); *Regents III, supra*, PERB Decision No. 2107-H, pp. 23-24 & 28-29.)

These principles tend to promote employer and union efficiency, while increasing the likelihood that employees have sufficient bargaining strength. Another

⁹ Although we may consider unit configurations that no party suggested, usually there would be reason to do so only if no party proposes an appropriate unit configuration.

purpose is ensuring that small and/or newly created classifications retain the realistic possibility of representation. (*Santa Clara, supra*, PERB Decision No. 2670-M, p. 27.) This is especially true in an accretion or other unit modification context. (*Monterey, supra*, PERB Decision No. 2821-M, p. 11; *Santa Clara, supra*, p. 19 [noting that “public sector bargaining units may require modification to avoid fragmentation and ensure operational efficiency”]; see also *Regents VI, supra*, PERB Order No. Ad-453-H, pp. 23-24; *Regents III, supra*, PERB Decision No. 2107-H, pp. 23-24 & 28-29.)¹⁰

As noted above, two aspects of these principles are that we: (1) must consider the impact of dividing a classification (§ 3579(a)(2)); and (2) must apply a rebuttable presumption against dividing occupational groups (§ 3579(c)).¹¹ While HEERA does not define the phrase “occupational group” found in section 3579(c), we do not interpret it to mean the same thing as “classification,” since that would render superfluous part of section 3579(a)(2). Analogous logic dictates that there is no

¹⁰ Because effective representation is one central purpose, the preference for broader units in the public sector does not warrant accreting a group of employees into a unit if the exclusive representative objects. (*Monterey, supra*, PERB Decision No. 2821-M, p. 12, fn. 9; *Salinas Valley Memorial Hospital District* (2020) PERB Decision No. 2689-M, p. 30, fn. 29 & p. 31, fn. 31; *Santa Clara, supra*, PERB Decision No. 2670-M, p. 31.) But this case poses no such issue.

¹¹ There are statutory exceptions to this presumption that are not relevant in this case, such as one exception for skilled craft employees (see § 3579(d)) and another covering UC academic senate faculty who seek representation at a single campus (see § 3579(e)). Moreover, we have found the presumption rebutted if the parties agree to divide an occupational group (see, e.g., *Regents of the University of California* (1999) PERB Decision No. 1359-H, adopting proposed decision at p. 4) or the employer waives any challenge to such a division (see, e.g., *Regents of the University of California* (1998) PERB Decision No. 1261-H, pp. 35-36).

presumption against splitting a classification; rather, HEERA merely instructs us to consider the impacts of splitting a classification. (§ 3579(a)(2).)

The presumption against splitting occupational groups fits best with the other unit determination criteria in section 3579 (including the community of interest factors found in section 3579(a)(1)) when we apply the presumption functionally rather than mechanistically. For instance, in *Regents III, supra*, PERB Decision No. 2107-H, UC's medical centers had assigned case manager duties to employees holding a variety of mostly unrepresented titles. Certain incumbents held a registered nurse (RN) license, and certain of these employees were in titles requiring an RN license, while other incumbents (including those trained as social workers) were not in such titles. (*Id.* at p. 3, fn. 3; see also *id.* at pp. 8-10, 15-16.) Unit placement therefore posed a choice of: (1) keeping classification schematics intact by placing employees performing case management work in RN titles with other employees holding RN titles, in the systemwide nurses' unit, thereby separating them from social workers and others performing case management work who did not hold RN titles, who would be placed in the systemwide health care professional unit; or (2) keeping employees performing similar work together, which might require splitting one or more classifications. We chose to place all unrepresented employees performing similar work in the health care professional unit, thereby splitting one or more classifications. (*Id.* at pp. 29-30.) *Regents III* thus illustrates that under our functional approach, an "occupational group" (such as employees performing case management) can potentially include parts of multiple classifications, in which case keeping an occupational group together can lead to splitting a title or classification.

In the current case, UC's initial position was that UAW's Petition proposed to split an occupational group. One could interpret this argument as suggesting a unit of VAPs and AAPs in every department at every campus, but UC in fact failed to take a position as to what unit would be most appropriate for Math Fellows. This was an unhelpful approach, since it is problematic to deny a representation petition on unit appropriateness grounds without noting at least one appropriate unit placement for the employees in question. In any event, UC waived that position by failing to file an appeal, and its own assertions showed that the argument lacked merit. Early in this case, UC conceded that Math Fellows are "a unique, discipline-specific creation meant to address the needs of the departments and mathematicians," and Anders' supplemental declaration explained that their duties and qualifications "are not consistent with the general experience level and expertise" of other VAPs and AAPs." Thus, taking a functional approach to the term "occupational group," there is no rebuttable presumption that Math Fellows should be in a unit with other VAPs and AAPs. Alternatively, if any such presumption could apply, UAW has rebutted it.

More generally, placing Math Fellows in either the PX or IX unit is consistent with HEERA in that it avoids fragmentation and proliferation, while allowing effective bargaining by both labor and management. UC-AFT's initial proposal, which is to afford Math Fellows split appointments in the PX and IX units, similarly would not increase the number of bargaining units with which UC must bargain (and would satisfy community of interest considerations). But even though such an arrangement would be an appropriate configuration—like the split appointments that Postdocs take on when they teach—it would be a notable change from the status quo for Math

Fellows. We find the split proposal to be a less preferable configuration than simply placing Math Fellows in either the PX unit or IX unit, as the split proposal would necessitate two sets of negotiations regarding Math Fellows' terms and conditions of employment, thereby creating inefficiencies and fragmenting employees' capability for the most effective representation at the bargaining table. Accordingly, in our below community of interest analysis, we confine ourselves to the two most appropriate of the three proposals before us, which are placing Math Fellows in either the PX unit or the IX unit.

II. Community of Interest Analysis

A. Applicable Principles

As noted at footnote 6, *ante*, PERB normally bases a community of interest determination on the inherent aspects of a position rather than terms and conditions of employment that can change through collective bargaining. (*Merced, supra*, PERB Decision No. 2901, p. 23.) The inherent aspects of a position tend to include: employees' duties, function, and/or common goals (which may result in interchange with other unit employees); supervision; working conditions that are not easily susceptible to change through collective bargaining; qualifications (including skills, education, and training); the extent to which they belong to the same employee organization; and employees' history of representation. (§ 3579(a)(1); *Merced, supra*, p. 23; *Monterey, supra*, PERB Decision No. 2821-M, p. 12.) For the sake of brevity, in the remainder of this decision we refer to employees' duties, function, common goals

and interchange under the general term “function,” and we refer to employees’ skills, education, training, and other qualifications under the term “qualifications.”¹²

Notably, “there is always variation between any two classifications in a bargaining unit, and such variation does not defeat community of interest if there are sufficient countervailing commonalities.” (*Monterey, supra*, PERB Decision No. 2821-M, pp. 12-13, citing *Santa Clara, supra*, PERB Decision No. 2670-M, p. 30 and *San Joaquin, supra*, PERB Decision No. 2650-P, pp. 17-18.) “Indeed, if the opposite were true, each classification would be its own bargaining unit” (*Monterey, supra*, p. 13), and we would have to “jettison the entire concept of a community of interest” (*San Diego Unified School District* (1981) PERB Decision No. 170, p. 5). Thus, for instance, employees may have a community of interest based on their common goal of serving communities that lack adequate resources. (*Kings County Office of Education* (1990) PERB Decision No. 801, p. 10.) Moreover, in analyzing the differences that inevitably exist between current unit members and those proposed to

¹² Although employees’ history of representation can be an important community of interest factor, it bears little weight for a group that has never been represented, such as Math Fellows. (*Monterey, supra*, PERB Decision No. 2821-M, p. 18; *San Joaquin Regional Transit District* (2019) PERB Decision No. 2650-P, p. 12, fn. 11 (*San Joaquin*); *Regents III, supra*, PERB Decision No. 2107, pp. 18-23; *Hemet Unified School District* (1990) PERB Decision No. 820 (*Hemet*).) Employees’ history of representation “is more important when employees have historically been in an established unit—such as when we consider a severance petition—because under those circumstances, maintaining continuity weighs against severance absent proof that collective negotiations are incapable of addressing the needs of a discrete minority within an existing unit.” (*Monterey, supra*, pp. 18-19; *City of Pasadena* (2021) PERB Decision No. 2788-M, p. 10; *Los Rios Community College District* (2018) PERB Decision No. 2587, pp. 4-6.)

join via a unit modification, one must also consider differences that already exist within the unit. (*Center Unified School District, supra*, PERB Decision No. 2379, p. 9.)

For instance, we held in *Regents III, supra*, PERB Decision No. 2107, that effective representation is possible even when a “pluralistic bargaining unit” includes a “diverse set of occupational groupings.” (*Id.* at p. 28.) We explained further: “It goes without saying that every occupational group has some internal community of interest.” (*Id.* at p. 29.) But creation of broad, diverse units is entirely consistent with effective representation. (*Ibid.*) Accordingly, even if employees perform different tasks, they still may have a community of interest for other reasons, including if they work in the same vocational setting. (*Id.* at p. 26.) In the unit modification context, “the fact that some but not all of the [petitioned-for classification’s] duties overlap with those of [existing] unit classifications weighs in favor” of the unit placement. (*Id.* at pp. 26-27.)

Here, based on Math Fellows’ function, qualifications, working conditions, and supervision, we find that they share a sufficient community of interest with both the PX and IX units such that either unit would be an appropriate unit placement. Our task is therefore to determine which unit shares a stronger community of interest with Math Fellows. Before doing so, however, we first clarify our precedent on the role of employee group functions in defining the contours of academic employee units at UC.

B. Precedent Regarding the Import of UC Academic Employee Functions

As noted above at pages 13-14, in *Regents I, supra*, PERB Decision No. 270-H, the Board relied on employee group functions when it initially divided most UC academic employees into units of “those primarily involved in teaching students and those primarily involved in research.” (*Id.* at p. 9 [emphasis added].) As we further

noted above (see footnote 8), the first of these units remains recognizable today as the IX unit, but the latter unit did not remain intact as a single statewide unit. Rather, in *Regents II*, *supra*, PERB Decision No. 270c-H, the Board divided the research unit into a unit of academic research professionals and a unit of research support professionals. (*Id.* at pp. 3-4.) The research support professional unit created in *Regents II* is akin to the unit of the same name currently represented by University Professional and Technical Employees, CWA Local 9119. The academic research professional unit created in 1984 does not exist in the same form today, though UAW represents two units that are indirect descendants of that unit in that they contain professional, academic employees primarily engaged in research: the PX unit at issue here and an Academic Researchers (RA) unit.

Given that the IX and PX units are, respectively, direct and indirect descendants of the Board's early academic employee unit determinations at UC, employee function continues to be a helpful means of viewing each unit. Thus, the IX unit tends to be most appropriate for employees "primarily" engaged in instruction, while the PX unit is one of multiple units that tend to be most appropriate for employees "primarily" engaged in research. However, we are also mindful that employees' function is just one of multiple factors in determining community of interest, while community of interest, in turn, is one of multiple unit determination criteria in HEERA section 3579. For this reason, the other criteria in section 3579 can outweigh employee function, depending on the circumstances. Indeed, as we explain *post* at pages 32-33, in this case we have little choice but to look beyond just

employee function, given that Math Fellows pursue an almost equal focus in both teaching and research.

Moreover, we do not accept UAW's contention that the IX unit is a "teaching only" unit that cannot, as a rule, include any employees who also have any research responsibilities. As an initial matter, it is worth noting that this argument could, by parallel logic, suggest that the PX unit cannot include employees who have any teaching responsibilities. Such a notion, ironically, would defeat UAW's own position in this case. In any event, UAW's argument has at least two aspects that show it to be incorrect. First, it directly conflicts with *Regents I, supra*, PERB Decision No. 270-H, which analyzed the employee function/duties factor by assessing whether employees were "primarily"—not exclusively—involved in teaching or research. (*Id.* at p. 9.) Second, it would tend to force all employees with mixed teaching and research responsibilities into newly created units, leading to unnecessary unit proliferation.

To the extent there is support for UAW's suggestion that the IX unit features a "teaching only" community of interest while the PX unit's community of interest is not "research-only," such support derives from an anomaly: while the Board has never been called on to consider the contours of the PX unit (either at the time of its 2008 creation or since), the Board has issued multiple decisions regarding the IX unit since its 1982 creation. Two of those decisions, *Regents IV, supra*, PERB Decision No. 2398-H and *Regents V, supra*, PERB Decision No. 2422-H, indicated that the IX unit is "teaching only." We now refine that language, however, to better effectuate HEERA's purposes, particularly given that construing the IX unit as "teaching only" would: (1) improperly afford determinative weight to just one community of interest

factor, thereby nullifying all other factors; and (2) contravene *Regents I, supra*, PERB Decision No. 270-H, which held that employees in the IX unit are “primarily” engaged in teaching. (*Id.* at p. 9.)

In *Regents IV, supra*, PERB Decision No. 2398-H, UC-AFT filed an unfair practice charge alleging that UCLA unilaterally changed the status quo without affording UC-AFT notice and an opportunity to bargain by failing to assign IX unit Lecturer titles to employees it hired primarily to teach law school classes; UCLA had instead assigned these employees unrepresented adjunct titles. (*Id.* at p. 1.) In deciding that UC committed the alleged violation, we did not purport to alter the existing IX unit. This is critical not only in viewing *Regents IV* as a general matter, but also in understanding its role in PERB precedent.

The status quo at issue in *Regents IV, supra*, PERB Decision No. 2398-H was set out in the so-called “Switkes Letter,” which was correspondence from a UC administrator reflecting an agreement between UC and UC-AFT on how to demarcate Lecturer assignments from non-bargaining unit adjunct assignments. (*Id.* at p. 8.) According to the Switkes Letter, an adjunct title is proper only for employees who either: (1) “are predominantly engaged in research or other creative work” and merely “participate in teaching”; or (2) “contribute primarily to teaching,” but “have limited responsibility for research or other creative work” and “are professional practitioners of appropriate distinction.” (*Id.* at pp. 8-9.)

Because the Switkes Letter is a private agreement, PERB is not bound by it in representation matters calling for unit placement determinations, and either party is free to ask PERB at any time to make unit determinations that disregard or adjust

such a private agreement. (*Merced, supra*, PERB Decision No. 2901, pp. 34-35, citing *Regents III, supra*, PERB Decision No. 2107, pp. 18-19 and *Hemet, supra*, PERB Decision No. 820, p. 5.) Indeed, as the Board explained at length in *Hemet*, regardless of whether the parties have such a private agreement:

“PERB is empowered to resolve any unit placement ‘disputes’ and the parties cannot, by agreement or otherwise, divest the Board of such jurisdiction. A mutual agreement regarding unit placement is, by all means, permissible and desirable; however, if, at any time, either party decides it is not satisfied with the agreed-upon placement, a ‘dispute’ then exists. At that point in time, PERB has the ultimate authority and duty to resolve the dispute.”

(*Hemet, supra*, PERB Decision No. 820, p. 5, citing *Regents of the University of California* (1989) PERB Decision No. 722-H.) Thus, the Switkes Letter constituted the status quo in a unilateral change case, but it does not bind PERB in any representation case involving unit placement determinations.¹³

The outcome of *Regents IV, supra*, PERB Decision No. 2398-H was correct, given that UCLA hired adjuncts to perform work traditionally done by Lecturers. Yet the language we used in our decision requires clarification, because we repeatedly used the phrase “teaching-only” to describe Lecturers’ work and by extension the IX

¹³ While the Switkes Letter thus has little import to the outcome of a representation case, in any event the letter does not purport to preclude the IX unit from including titles with certain research responsibilities. To the contrary, even assuming solely for the sake of argument that unit placement determinations were based on the Switkes Letter rather than HEERA section 3579 and decisions such as *Regents I*, the letter’s terms indicates that the IX unit includes employees who primarily teach but have some responsibility for research or other creative work, unless such employees are “professional practitioners of appropriate distinction.” (*Regents IV, supra*, PERB Decision No. 2398-H, pp. 8-9.)

bargaining unit. Notably, *Regents IV* explicitly used the phrase “teaching only” to summarize *Regents I*, *supra*, PERB Decision No. 270-H. (See *Regents IV*, *supra*, p. 4 & fn. 4.) As described above, *Regents I* in fact found a relevant community of interest among employees who are “primarily” engaged in teaching. While our imprecise summary in an unfair practice case did not modify a foundational unit determination, to avoid any future confusion we clarify *Regents IV* as follows: The IX unit is not “teaching-only.” Instead, we assess the contours of the IX unit based on all the criteria set forth in HEERA section 3579. And while employee function is one community of interest factor that favors including employees “primarily” engaged in teaching, *Regents I* does not bar placing employees in the IX unit merely because they also perform duties other than teaching, such as research and service. The same logic applies to the PX unit, which is a derivative of the research-focused unit the Board created in *Regents I* and then subdivided in *Regents II*. Thus, the PX unit is not “research-only” and therefore may include employees even if they also perform work other than research, such as teaching and service.

Regents V, *supra*, PERB Decision No. 2422-H, similarly requires clarification. In that case, UC-AFT sought to modify the IX unit to include employees in a newly created classification called “Professor of Practice.” The operative classification description was ambiguous as to the classification’s role, stating that employees in the Professor of Practice title “primarily contribute to teaching *and/or* research programs.” (*Id.*, adopting proposed decision at p. 6.) The new classification included only three employees, two of whom were in their first year of employment and did not perform any teaching whatsoever, making their duties “inconsistent with the primarily

instructional duties” of the IX unit. (*Id.* at pp. 2-3.) The third Professor of Practice was also in his first year in the title. His focus was “designing and preparing course offerings,” which the parties agreed was instructional, but he also performed research-focused duties to a lesser degree. We declined to add the title to the IX unit based on that record, which we described as “less than satisfactory” in that it included no testimony from any of the three Professors of Practice, their supervisors, or any other witnesses with first-hand knowledge of the duties assigned to and performed by the Professors of Practice. (*Id.* at p. 20.)¹⁴

As with *Regents IV*, *supra*, PERB Decision No. 2398-H, we have no cause to disturb our conclusion in *Regents V*, *supra*, PERB Decision No. 2422-H. Indeed, based on the skeletal *Regents V* record regarding a new and barely used classification, it would have been premature at best to place Professors of Practice in the IX unit. But clarification is necessary because in *Regents V*, we relied on *Regents IV* for the notion that the IX unit is for instructors who perform “only” teaching. (*Regents V*, *supra*, PERB Decision No. 2422-H, p. 9.) We therefore clarify *Regents V* in the same manner as we clarified *Regents IV*.

C. Comparative Community of Interest Analysis for the PX and IX Units

To assess Math Fellows’ community of interest vis-à-vis the PX and IX units, we first consider employee function. As noted above, three department chair declarants asserted that research and teaching are an equal focus for Math Fellows, while three other department chair declarants stated that teaching was more

¹⁴ We invited UC-AFT to re-petition based on a more complete record. (*Regents V*, *supra*, PERB Decision No. 2422-H, p. 18, fn. 10.)

important. Accordingly, this factor slightly favors placing Math Fellows in the IX unit over the PX unit, as UAW cannot establish that Math Fellows are “primarily” engaged in research, while UC-AFT has a colorable argument that they are “primarily” engaged in teaching. But there are multiple reasons this is not dispositive. First, the tilt toward teaching is slight. Second, as discussed above, employee function is but one community of interest factor. Third, no party has argued that Math Fellows’ slight tilt toward teaching leads to greater interchange with Lecturers than with Postdocs, making it a less critical factor.¹⁵

We turn next to qualifications. This factor shows that Math Fellows share a strong community of interest with both the PX and IX units, as in each case similarities in qualifications far outweigh the differences. However, comparing qualifications points slightly in favor of the PX unit given that Math Fellows (like Postdocs) are early-career trainees, while Lecturers may or may not be early in their academic careers. Indeed, because Math Fellows and Postdocs are both early-career trainees, they typically take on transitional roles aimed at gaining skills, experience, and curriculum vitae accomplishments that will help them on the academic job market.

Next, we consider supervision and the limited subset of working conditions that tend not to be susceptible to change through collective bargaining. Once again, Math Fellows’ similarities with both the PX and IX unit easily outweigh differences, further

¹⁵ As noted, we have never issued a unit determination decision regarding the PX unit. For this reason, it is by reference to the UC academic research units the Board created in the early 1980s that we find a research-oriented focus is one factor favoring inclusion in the PX unit, though it need not be determinative. Moreover, while Math Fellows do not “primarily” focus on research in the literal sense of performing more research than teaching, research is certainly a critical focus for them.

confirming that Math Fellows share a strong community of interest with both the PX and IX units. But Math Fellows share more similarities with the PX unit, particularly because Math Fellows' early-career, transitory status makes their conditions more like those of Postdocs than those of Lecturers.

Finally, we consider "the extent to which the employees belong to the same employee organization." (§ 3579(a)(1).) Notably, while employees have the right to express their individual preferences and thereby collectively decide which union (if any) they want to represent their unit through petitions for recognition, certification, decertification, and/or severance, they do not normally have the "right to choose the bargaining unit in which their classification or position is placed." (*Regents v. PERB*, *supra*, 51 Cal.App.5th 159, 190; *Regents III*, *supra*, PERB Decision No. 2107-H, pp. 23-24.) Thus, in accretion cases where the unrepresented employees total less than 10 percent of the unit to which they would be added, a petitioner normally need not demonstrate that it has the employees' support. (*Regents v. PERB*, *supra*, 51 Cal.App.5th 159, at pp. 190-192.) In such cases, California public sector labor laws favor stable and harmonious labor relations over affording employees a right to choose their unit placement. (*Id.* at p. 192.) However, a partially countervailing legal principle nonetheless applies in limited circumstances: if a substantial number of employees in a group have decided to join the same employee organization, such mass membership constitutes a relevant community of interest factor under HEERA section 3579(a)(1) and comparable parts of selected other labor relations acts. (§§ 3545(a), 99565(a)(1); *St. HOPE Public Schools* (2018) PERB Order No. Ad-472-H, p. 9.) Here, this factor favors the PX unit over the IX unit, as UAW

submitted proof of majority support while UC-AFT never attempted to collect or submit such proof of support.

Accordingly, while both UAW and UC-AFT have made proposals that would constitute an appropriate unit, UAW's proposal is the most appropriate of the options before us. We reach this conclusion for all of the foregoing reasons, including because: (1) although Math Fellows do not "primarily" perform research in the literal sense of the word "primarily," research is such an important focus for Math Fellows that it is almost equal to their teaching focus; (2) Math Fellows' qualifications and working conditions overlap substantially with both the PX and IX unit, but more so with the PX unit; and (3) Math Fellows have chosen to join UAW—the union representing the PX unit—to a very significant extent, while UC-AFT submitted no proof of support whatsoever. In sum, the unit determination criteria set forth in HEERA section 3579 favor including Math Fellows in the PX unit, and we shall so order.

III. Retitling the Math Department VAPs and AAPs as "Math Fellows"

Our unit modification order in this case divides two classification schematics by splitting off a fraction of employees currently classified as VAPs and AAPs. Where we order a unit modification or other unit determination that requires an employer to split a classification, we normally leave to collective bargaining any retitling that one or both parties may believe is wise. (See, e.g., *Regents III*, *supra*, PERB Decision No. 2107-H, p. 3, fn.3, & pp. 29-30 [splitting Administrative Nurse classification without retitling]; see also *Alum Rock Union Elementary School District* (1983) PERB Decision No. 322, pp. 13-15 [retitling is a mandatory bargaining topic].) Here, too, the impacted employees' ultimate title is a mandatory subject of bargaining. But we must

nonetheless decide whether to order retitling to “Math Fellows” as the default title pending bargaining. Given that UAW and UC mutually seek this retitling as a means of better reflecting the differences from other VAPs and AAPs, our order incorporates this agreement. Nothing in our order prevents further title changes made in compliance with HEERA’s duty to bargain in good faith and PERB precedent.

ORDER

The systemwide Postdoctoral Scholars (PX) bargaining unit at the Regents of the University of California is HEREBY MODIFIED to include the following positions, which shall be retitled into a newly created payroll classification known as Math Fellows, unless the parties agree otherwise:

Positions titled “Visiting Assistant Professor” in the Math Departments at UC Berkeley, UC Davis, UC Irvine, UC Merced, UC Riverside, UC Santa Barbara, UC Santa Cruz, and UC San Diego; positions titled “Assistant Adjunct Professors” in the Math Department at UC Los Angeles. At UC Berkeley, this position is sometimes referred to as a “Morrey Visiting Assistant Professor.” At UC Davis, this position is sometimes referred to as a “Krener Visiting Assistant Professor.” At UC San Diego, this position is sometimes referred to as a “Stefan E. Warchawski Visiting Assistant Professor.” At UCLA, this position may have several titles including “Hendrick Assistant Adjunct Professor.

This Order does not create a 12-month election bar pursuant to PERB Regulation 32754(c).

Members Paulson and Krausse joined in this Decision.