



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

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Employer,

and

UNIVERSITY PROFESSIONAL AND
TECHNICAL EMPLOYEES,
COMMUNICATION WORKERS OF
AMERICA LOCAL 9119,

Exclusive Representative.

Case Nos. SF-UM-913-H
SF-UM-914-H
SF-UM-915-H
SF-UM-916-H

PERB Order No. Ad-527-H

April 9, 2025

Appearances: Leonard Carder by Emily M. Maglio, Attorney, for University Professional and Technical Employees, Communication Workers of America Local 9119; Schwartz, Steinsapir, Dohrmann & Sommers by Margot A. Feinberg and Thomas Marren, Attorneys, for Student Services and Advising Professionals – United Auto Workers.

Before Banks, Chair; Paulson and Krausse, Members.

DECISION

PAULSON, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on appeal by University Professional and Technical Employees, Communication Workers of America Local 9119 (UPTE) from an Administrative Determination by PERB's Office of the General Counsel (OGC). In the four above-captioned unit modification petitions, UPTE sought to add certain classifications of employees to the Healthcare Professionals (HX) bargaining unit UPTE exclusively represents at the Regents of the University of California (UC). While those petitions were pending, interested party Student Services and Advising

Professionals – United Auto Workers (SSAP-UAW) filed a request for recognition accompanied by proof of support seeking to represent a proposed unit of student services and advising professional employees, some of whom were also included in UPTE’s unit modification petitions. OGC determined that the four above-captioned unit modification petitions required a showing of proof of support and provided UPTE an opportunity to submit that support for verification. UPTE did not submit any proof of support and so OGC dismissed the petitions.

On appeal, UPTE urges us to find that that it was not required to submit proof of support with its petitions. In the alternative, UPTE argues that OGC’s determination that it was required to provide proof of support was premature, and should be deferred until PERB determines that SSAP-UAW’s proposed unit is appropriate.

We have considered the parties’ arguments on appeal and the entire record in the consolidated cases. We also take notice of the record in SSAP-UAW’s request for recognition, Case No. SF-RR-1050-H. For the reasons explained below, we find that UPTE’s unit modification petitions are subject to dismissal because they were not accompanied by 30 percent proof of employee support.¹ Accordingly, we affirm OGC’s

¹ Under PERB Regulations, unit modification petitions to add positions or classifications to a bargaining unit must be accompanied by proof of majority support only if the number of employees to be added would increase the size of the bargaining unit by at least 10 percent. (PERB Reg. 32781(e)(1).) In addition to the conclusion we address in this appeal, OGC further determined that UPTE needed to provide proof of majority support because the total number of employees included in the unit modification petitions was at least 10 percent of the existing HX bargaining unit. UPTE contends that the number of employees to be added to the bargaining unit is less than 10 percent. We note that in reaching its conclusion, OGC relied only on numbers provided by UC, which UPTE disputes. In other circumstances, we may order additional investigation before a petition is dismissed for similar reasons. However,

Administrative Determination and dismiss UPTE's unit modification petitions without prejudice.

BACKGROUND

The Higher Education Employer-Employee Relations Act (HEERA) and PERB Regulations govern representation disputes between higher education employers and unions representing higher education employees.² UC is a higher education employer pursuant to section 3562(g). UPTE is a recognized employee organization pursuant to section 3562(p). SSAP-UAW is an employee organization pursuant to section 3562(f)(1). Between October 24 and November 1, 2024, UPTE filed four unit modification petitions pursuant to PERB Regulation 32781(a)(1).³ Each petition sought

because we determine that UPTE's petitions must be dismissed for lack of a lesser showing of employee support, this issue is moot.

² HEERA is codified at Government Code section 3560 et seq. Unless otherwise specified, all statutory references herein are to the Government Code. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

³ PERB Regulation 32781(a)(1) provides:

“Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

“(a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:

to add parts of individual title code series to the HX unit, contending that the included employees shared a community of interest with employees already in the unit.⁴ UPTE did not submit proof of support with any of the petitions.

On November 8, 2024, SSAP-UAW filed a request for recognition pursuant to PERB Regulation 51030 seeking to exclusively represent a proposed bargaining unit of student services and advising professionals comprised of employees in sixteen title code series.⁵ All of the employees included in UPTE's pending unit modification petitions were also included in SSAP-UAW's request for recognition.

On November 21, 2024, OGC consolidated UPTE's four unit modification petitions into a single proceeding. On November 22, 2024, OGC sent the parties a letter stating PERB Regulation 32781(e)(2) required UPTE to provide proof of support with its unit modification petitions. PERB Regulation 32781(e)(2) provides:

“If the [unit modification] petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at

“(1) To add to the unit unrepresented classifications or positions[.]”

⁴ Title codes are unique identifiers assigned to specific job positions within the UC system. Case No. SF-UM-913-H included employees in the Student Disability Specialist 2-4 title code. Case No. SF-UM-914-H included employees in the Health Educator 2-3 title code. Case No. SF-UM-915-H included employees in the Student Life and Development Specialist 3 title code. Case No. SF-UM-916-H included employees in the Advocate 4 title code.

⁵ Among other classifications, SSAP-UAW's proposed unit included the Student Disability Specialist 1-4, Health Educator 1-4, Student Life and Development Specialist 104, and Advocate 3-4 title code series.

least thirty percent support of persons employed in the classifications or positions to be added.”

OGC afforded UPTE until December 13, 2024 to provide the proof of support. On December 3, 2024, UPTE filed a letter disputing OGC’s determination that PERB Regulation 32781(e)(2) required it to provide proof of support. On December 6, 2024, OGC issued an Order to Show Cause (OSC) explaining reasons for its initial determination to require proof of support and directing UPTE to respond on or before December 11, 2024. UPTE responded timely by letter with supporting arguments but did not submit proof of support.

On December 16, 2024, OGC informed the parties that SSAP-UAW had submitted proof of majority support among employees in the proposed student services and advising professionals bargaining unit. On December 17, 2024, SSAP-UAW filed a letter urging OGC to dismiss UPTE’s unit modification petitions for the reasons stated in the OSC. The same day, OGC issued the Administrative Determination dismissing the unit modification petitions.

On January 6, 2025, UPTE appealed the Administrative Determination and requested the Board stay all activity in SSAP-UAW’s request for recognition, Case No. SF-RR-1050-H. On January 16, 2025, SSAP-UAW filed an opposition to UPTE’s appeal and request for stay. The next day, OGC entered a stay of activity in Case No. SF-RR-1050-H on its own motion, pending resolution of this appeal.

DISCUSSION

In an appeal from an administrative determination, the appellant bears the burden to show the decision being challenged departs from Board precedent or regulations. (*Dailey Elementary Charter School (2024)* PERB Order No. Ad-514, p. 6.)

The Board applies an abuse of discretion standard in reviewing a Board agent's determinations on the conduct of the investigation. (*City and County of San Francisco* (2022) PERB Order No. Ad-497-M, p. 23.) We review the Board agent's legal conclusions de novo. (See *Merced City School District* (2024) PERB Decision No. 2901, p. 2.)

The central point of dispute between UPTE and SSAP-UAW is whether or not PERB Regulation 32781(e)(2) requires dismissal of UPTE's unit modification petitions. UPTE first argues that the regulation does not apply, because it filed the unit modification petitions before SSAP-UAW filed its petition for recognition. In the alternative, UPTE argues that even if the regulation applies to UPTE's petitions, OGC's determination dismissing them is premature.

As noted above, PERB Regulation 32781(e)(2) states that if a unit modification petition to add classifications or positions to an existing bargaining unit includes employees who are also included in a "proposed appropriate unit in a pending request for recognition or petition for certification," the unit modification petition must be accompanied by proof of at least 30 percent support of the employees to be added. The parties' arguments require interpretation of two different terms in this quoted language. First, whether a "pending" request for recognition includes such cases that may be filed after a unit modification petition, but while the unit modification petition is still under review at PERB. Second, whether the term "proposed appropriate unit" means a unit that has already been determined to be appropriate at the time the unit modification petition is pending. We find that UPTE's positions on both questions are not supported by PERB Regulations or existing precedent, as we explain below.

I. PERB Regulation 32781(e)(2) Require Proof of Support for Any Unit Modification Being Processed Simultaneously with a Petition for Recognition or Certification

UPTE's first argument is that the Administrative Determination erred by applying Regulation 32718(e)(2) because SSAP-UAW's request for recognition was not "pending" when UPTE filed any of the four unit modification petitions at issue in this case. UPTE argues that the plain meaning of the word "pending" is to describe a matter already existing at the time. (See PENDING, Black's Law Dictionary (12th ed. 2024) ["Remaining undecided; awaiting decision <a pending case>"].)

We accept that UPTE's interpretation of the word "pending" is a common one without ready exceptions, but this does not fully answer the question in the case. It is undisputed that there was no overlapping pending request for recognition or petition for certification when UPTE filed the unit modification petitions. However, once SSAP-UAW filed its request for recognition, that was no longer true. Thus, the question before us is whether Regulation 32781(e)(2) applies under these circumstances, where a request for recognition or petition for certification becomes "pending" while an overlapping unit modification petition is still being processed. The text of the Regulation itself does not contain any restrictions on it becoming applicable later, once there is a pending overlapping petition.

It was therefore appropriate for OGC to consider the regulatory history of Regulation 32781(e)(2). As OGC informed the parties in the OSC, the Board's final statement of reasons submitted in support of that provision stated:

"Third, the Board is also proposing to provide for a circumstance where 30 percent employee support would be required for a unit modification petition. The fact pattern where this proposed change would be applicable involves a

union petitioning to create and become the exclusive representative for a unit of currently unrepresented employees, and an exclusive representative of a separate unit that wishes, instead, to have the employees added to its unit. In any particular case, either the unit modification petition or the initial representation petition might be filed first, but in any event the two filings are being processed at the same time. Under these circumstances, it would be appropriate to have the exclusive representative demonstrate support for its unit modification petition among the unrepresented employees when the petitioning union has already demonstrated support (normally a majority). The 30 percent level is provided for as it is the most common level of support required for an employee organization to intervene on a request for recognition or qualify for the ballot in a representation election.”

[¶] . . . [¶]

“[A]dopting the proposed language... would allow for application of the new 30 percent employee support requirement for a unit modification petition even where it was filed in advance of a later-filed, overlapping initial representation petition.”

(Public Employment Relations Board, Regulations Regarding Unit Modification Petitions, Approved Rulemaking Material, March 2, 2006, Final Statement of Reasons, OAL 06-0303-01 (emphasis added).) We agree with OGC that this regulatory history plainly shows Regulation 32781(e)(2) was meant to apply when there are simultaneously pending, overlapping unit modification petitions and requests for recognition or petitions for certification, regardless of which petition was filed first. We

therefore reject UPTE's first argument and conclude that the relative timing of the overlapping petitions does not itself affect whether Regulation 32781(e)(2) applies.⁶

II. "Proposed Appropriate Unit" Generally Refers to a Description of a Unit Proposed to be Appropriate for Representation

UPTE's second argument is that even if PERB Regulation 32781(e)(2) applies to unit modification petitions when an overlapping request for recognition is filed later, dismissal of the unit modification petition is premature before PERB determines that SSAP-UAW's proposed unit is appropriate. The parties do not provide any arguments concerning the plain text of the Regulation, but we begin there nonetheless.

As noted above, Regulation 32781(e)(2) applies where positions or classifications proposed to be added to a unit in a unit modification petition overlap with those included in a "proposed appropriate unit" in a request for recognition. To be consistent with UPTE's argument, this language must refer to an unrepresented unit that has already been determined to be appropriate for representation. To support SSAP-UAW's argument in this case, the language must instead be equivalent to an unrepresented unit that is proposed to be appropriate.

The term "proposed appropriate unit" is not explicitly defined anywhere in PERB Regulations. However, including Regulation 32781(e)(2), it appears 23 times. In all but four instances, the term is used to describe information to be provided along with a request for recognition, petition for certification, or severance petition. For example, a petition for certification arising under the Meyers-Milias-Brown Act (MMBA, § 3540 et seq.) must include "[a] description of the proposed appropriate unit, including the

⁶ We consider this interpretation in light of the overall purpose of the proof of support requirement in Regulation 32781(e)(2) in Section III, *post*.

classifications and positions to be included and those to be excluded[.]” (PERB Reg. 61210(a)(3).) The other four instances are Regulation 32718(e)(2) itself and three additional substantively identical provisions that apply to cases arising under different labor relations statutes.⁷ Thus, where PERB Regulations refer to a “proposed appropriate unit,” that term invariably means a description of positions or classifications that are proposed to be appropriate for representation.

On the other hand, apart from Regulation 32781(e)(2) itself, PERB Regulations for cases arising under HEERA do not use the exact same term. Most pertinent to this case, the section governing requests for recognition refers to a “unit claimed to be appropriate” in lieu of the other formulation. (See PERB Reg. 51030.) Elsewhere, however, the terms are used interchangeably. (Compare PERB Regs. 61215(a)(3) and (b).)

This textual evidence, on balance, supports SSAP-UAW’s reading of Regulation 32781(e)(2) rather than UPTE’s. The most consistent reading of the language means that a unit modification petition requires proof of 30 percent support when a simultaneously pending request for recognition or petition for certification proposes to place overlapping classifications in a new bargaining unit. Thus, a finding that the

⁷ While Regulation 32718(e)(2) applies to cases arising under the Educational Employment Relations Act (EERA, § 3540 et seq.), HEERA (§ 3560 et seq.), the Ralph C. Dills Act (§ 3512 et seq.), the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (Pub. Util. Code, § 99560 et seq.), and the Judicial Council Employer-Employee Relations Act (§ 9524.50 et seq.), the Board has promulgated separate but identical provisions for cases arising under the MMBA (PERB Reg. 61450(e)(2)), the Trial Court Employment Protection and Governance Act (PERB Reg. 81450(e)(2)), and the Trial Court Interpreter Employment and Labor Relations Act (PERB Reg. 91450(e)(2)).

proposed bargaining unit is appropriate is not required before Regulation 32781(e)(2) applies.

This interpretation is also more consistent with PERB Regulations governing representation matters more broadly. As noted above, the Board's statement of reasons explaining the need for Regulation 32781(e)(2) analogized to intervention petitions to justify a proof of support requirement under these circumstances.

Intervention petitions arising under HEERA must be accompanied by proof of at least 30 percent support in the unit "claimed to be appropriate by the intervenor." (PERB Reg. 51040(b).)

Normally, proof of support determinations are made during the very first phase of a Board agent's investigation, well before any unit appropriateness disputes are resolved. (See PERB Reg. 32784 [Employer files list of employees within 20 days of filing of petition, after which Board agent may allow up to 10 days for petitioner to cure any deficiencies, and thereafter "shall inform the parties in writing of the determination as to sufficiency of the proof of support"].) This is true regardless of whether the matter arrives at the Board through a unit modification petition or request for recognition or intervention. (See also PERB Reg. 51050.) Indeed, an employer is not expected to even raise appropriateness concerns about a proposed unit until *after* PERB determines that proof of support is adequate. (See PERB Reg. 51080.) Proof of support is therefore normally a union's ticket to initiate or join a representation dispute from the outset, before any unit determination investigation begins. In an accretion case, a later, second proof of support showing may be required if the unit

appropriateness determination finds that fewer employees will be added to the bargaining unit than were initially petitioned for. (PERB Reg. 32786(c).)

UPTE's textual arguments do not support what would be a fundamentally different process than the one mandated in other representation disputes where proof of support is required. UPTE's argument that PERB must first determine that SSAP-UAW's proposed unit is appropriate before requiring UPTE to provide its own proof of support has no basis in the text of PERB Regulations. We turn now to the broader concerns that animate the normal operation of proof of support requirements in these cases.

III. OGC's Application of PERB Regulation 32781(e)(2) is in Harmony with PERB Precedent Prioritizing Resolution of Questions Concerning Representation over Unit Appropriateness Claims

The Board has, for decades, observed and balanced two competing interests in representation cases: stable and harmonious labor relations based on appropriate bargaining units, and employee free choice. In some cases, as where a group of unrepresented employees proposed to be added to an existing bargaining unit is small, and there are no competing claims of representation, employees' preferences are given little weight. Because accreting a group of employees that constitutes less than 10 percent of the total number of employees in the unit is unlikely to impact a union's overall majority support, proof of support is not required in such cases.

(Regents of University of California v. Public Employment Relations Board (2020)

51 Cal.App.5th 159, 190.) Under those circumstances, there is no "question concerning representation." Instead, PERB determines, in disputed cases, only

whether the proposed unit modification is appropriate by applying the applicable statutory unit determination criteria.⁸

⁸ HEERA's unit determination criteria include five overlapping factors:

“(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.

However, the Board has been periodically asked to resolve disputes caused when one employee organization has filed a unit determination case that does not raise a question concerning representation, and a second organization has filed representation petition requiring proof of support, and the two petitions are incompatible or contradictory. In the examples discussed below, the Board has prioritized permitting employees to exercise free choice in their selection of a representative over another organization's pursuit of a more appropriate unit. These cases inform and support our application of PERB Regulation 32781(e)(2).

In *Peralta Community College District* (1987) PERB Order No. Ad-164 (*Peralta*) an incumbent exclusive representative of two separate bargaining units filed a unit modification petition to consolidate them, and to accrete additional employees, into a single bargaining unit. (*Id.* at p. 2.) Four days later, another employee organization filed a decertification petition to replace the incumbent as the exclusive representative of one of the two established units. (*Ibid.*) Noting that both petitions were properly filed, the Board determined that the decertification petition should be given priority, so long as no formal determination on the merits of the unit modification had been made at the time the decertification petition was filed. (*Id.* at p. 8.)

“(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.”

(§ 3579(a).) In addition to these, HEERA contains further unit determination criteria that apply in specific circumstances. (§ 3579(b)-(f).)

The *Peralta* Board explained that permitting the decertification petition to proceed first, potentially invalidating the unit modification petition (depending on the outcome of the election) best effectuated the purpose of the statute:

“While a balance must be struck between issues of unit clarification and questions concerning representation, preservation of the integrity of the statutory scheme of the EERA can best be achieved by recognizing the paramount right of public school employees to select an exclusive representative of their own choice. The free choice of an exclusive representative is a cornerstone of the EERA, as it is in all analogous collective bargaining schemes. Not only is free choice crucial to protecting the individual rights bestowed by the statute, but it is also critical to stable and efficient labor relations. For collective bargaining to work, an exclusive representative must fairly and effectively represent the interests of the members of the bargaining unit. The best guarantee of such a result is the free and democratic selection of such representatives by unit members.”

(*Peralta, supra*, PERB Order No. Ad-164, pp. 7-8.)

UPTE contends that in *Peralta*, “PERB held that the question of the appropriate unit should be determined first.” This reading stems from fact that the unit that was the subject of the decertification petition had been determined to be appropriate, albeit in a previous case. (*Peralta, supra*, PERB Order No. Ad-164, p. 7, referencing *Peralta Community College District* (1978) PERB Decision No. 77.)

UPTE’s argument removes this fact from its proper context in the decision. In noting that the bargaining unit was previously established by the Board, the Board was rejecting the incumbent union’s argument that circumstances had changed such that the decertification petition was not filed in an “established unit.” (*Peralta, supra*, PERB Order No. Ad-164, p. 7.) A decertification petitioner need only show that the petition is

filed for an established unit, not that the established unit is appropriate. There is no indication in the text of the decision that the *Peralta* Board meant to require bargaining units to be appropriate before being subject to otherwise properly filed decertification petitions. Indeed, this would be directly contrary to the policy reasoning quoted above, and the actual outcome of the case: the unit modification petition was held in abeyance while the decertification petition proceeded. (*Id.* at pp. 11-12.)

The *Peralta* Board also held that this procedure was needed to curb abuse. (*Peralta, supra*, PERB Order No. Ad-164, p. 9.) Allowing the unit modification to proceed first would allow frivolous petitions to unduly delay elections. On the other hand, permitting the decertification petition to be processed first did not carry the same potential for abuse, because such petitions require proof of support. (*Id.* at pp. 9-10.) “Proof of employee support acts as an inherent check upon the filing of frivolous petitions.” (*Id.* at p. 10.)

Though *Peralta* involved an attempted unit consolidation request meant to thwart a decertification petition, a later case demonstrates the similar kind of abuse that may arise if accretion cases were to be given priority over questions concerning representation. In *Santa Clarita Community College District (College of the Canyons)* (2003) PERB Decision No. 1506 (*Santa Clarita*), full-time college faculty members were included in a bargaining unit exclusively represented by an incumbent employee organization, but part-time faculty were excluded from the unit and remained unrepresented. (*Id.* at p. 4.) For years, the part-time faculty sought to be included in the faculty bargaining unit and made entreaties to the incumbent union to that effect. (*Ibid.*) But the incumbent union rebuffed these efforts, perhaps concerned

that part-time faculty would “dilute the vote” of the full-time faculty. (*Ibid.*) After the failure of these efforts, part-time faculty members contacted a different employee organization, which began an organizing drive to create and represent a part-time faculty bargaining unit. (*Id.* at p. 5.)

Shortly after the part-time faculty began their organizing drive, the full-time faculty union reversed course, though without the consent or involvement of the part-time faculty. (*Santa Clarita, supra*, PERB Decision No. 1506, p. 5.) The full-time faculty union filed a unit modification petition without proof of employee support and requested that the employer voluntarily agree to modify the full-time faculty bargaining unit to include part-time faculty. (*Ibid.*) The employer initially declined this request, but several weeks later entered into an agreement with the full-time faculty union to amend the recognition clause in the parties’ agreement to grant the full-time faculty union the right to represent part-time faculty. (*Id.* at pp. 5-7.) Several months later, the part-time faculty union filed a request for recognition accompanied by proof of majority support within a proposed part-time faculty bargaining unit. (*Id.* at p. 7.) The part-time faculty union also filed an unfair practice charge against the employer for its conduct in agreeing to the unit modification with the full-time faculty union.

The Board found that the employer unlawfully contributed support to the full-time faculty union when it entered into the unit modification agreement. The Board reasoned that employees’ statutory right to be represented by organizations of their own choosing meant that employees could not be “forced into being represented by an employer-favored union in the face of organizing efforts by another employee organization of which the employer is on notice.” (*Santa Clarita, supra*, PERB Decision

No. 1506, p. 22.) On the facts of that case, the incumbent union lacked the support “of an uncoerced, unassisted majority, any majority, or a single member of the adjunct faculty during the relevant time periods.” (*Id.* at pp. 14-15.) Yet the employer agreed to place those same employees in the incumbent’s bargaining unit at the same time it was aware of the ongoing efforts by the rival union to organize them into a separate unit. (*Id.* at p. 26.) This conduct tended to influence employees’ selection of a representative and thus violated the statute’s prohibition on providing unlawful assistance to an employee organization. (*Ibid.*) Notably, this finding “[did] not require a determination regarding what would constitute an appropriate unit.” (*Id.* at p. 26, fn. 10.)

These precedents uphold a consistent principle across diverse procedural circumstances: the Board will resolve a question concerning representation before it considers unit modification petitions that lack proof of employee support. In effect, the existence of a question concerning representation demands that the Board prioritize employees’ right to select their own representative over its own responsibility to determine appropriate units. The Board’s regulations are enacted in harmony with and give effect to these statutory principles. (*Santa Clarita, supra*, PERB Decision No. 1506, pp. 21-22.)

Regulation 32781(e)(2) must therefore be interpreted to give effect to employees’ right to select a representative. As discussed in sections I and II, *ante*, the text of the Regulation, the statements justifying its promulgation, and the overall regulatory context all support an interpretation requiring proof of 30 percent employee support for any unit modification petition that is pending at the same time as a request

for recognition or petition for certification involving some of the same employees, before any unit appropriateness determination is made. Requiring proof of support under these circumstances prevents abuse (*Peralta, supra*, PERB Order No. Ad-164, pp. 9-10) and preserves employees' statutory right to select a representative (*Id.* at pp. 8-9; *Santa Clarita, supra*, PERB Decision No. 1506, p. 24).

Thus, once SSAP-UAW filed its request for recognition for a proposed unit of employees that included the same ones subject to UPTE's unit modification petitions, PERB Regulation 32781(e)(2) immediately imposed a 30 percent proof of employee support requirement on UPTE's petitions. UPTE's failure to provide proof of support renders the petitions subject to dismissal. (PERB Reg. 32786(b) [Board "shall" dismiss a unit modification petition if proof of support submitted falls short of requirements].) If for any reason the disputed positions or classifications remain unrepresented upon the conclusion of PERB's processing SSAP-UAW's request for recognition, UPTE may re-file its unit modification petitions.⁹

IV. Further Case Processing

As noted above, OGC entered a stay of activity in SSAP-UAW's petition for recognition on its own motion, pending resolution of this appeal, on January 17, 2025. In light of the Board's resolution of UPTE's appeal, we direct OGC to lift the stay of activity in Case No. SF-RR-1050-H.

⁹ Our order in this matter differs from the Board's order in *Peralta, supra*, PERB Order No. Ad-164, which was to hold the unit modification petition in abeyance pending the outcome of the decertification election. (*Id.* at p. 12.) This difference is due to Regulation 32786(b)'s mandate that the Board agent dismiss petitions that fail to provide the required proof of employee support, and the fact that PERB Regulation 32781(e)(2) did not exist at the time *Peralta* was decided.

Finally, we take notice of UPTE's December 19, 2024 application for joinder as a full party to SSAP-UAW's request for recognition, and SSAP-UAW's opposition thereto. OGC has not yet ruled on UPTE's application due to the stay, and no party has placed the issue of UPTE's status before the Board.

However, HEERA empowers the Board to "take any other action" it "deems necessary to discharge its powers and duties and otherwise to effectuate the purpose of [HEERA]." (§ 3563(m).) Here, there are substantial overlapping issues between the questions presented in the instant appeal and UPTE's application for joinder: both fundamentally involve what role UPTE may play in PERB's resolution of the question concerning representation presented by SSAP-UAW's request for recognition. In light of the Board's findings in this case, we provide the following guidance to OGC and the parties in further processing the request for recognition.

Requests for joinder as a party are governed by PERB Regulation 32164, which states that an employee, employee organization, or employer may request to join a case if that party has a "substantial interest in the case or will contribute substantially to a just resolution of the case and will not unduly impede the proceeding." This regulation does not contain any limitations on the procedural circumstances in which it is available. In some circumstances, joinder may be the appropriate procedure where an employee organization seeks to intervene in another organization's representation case. For instance, as we recently held in *Regents of the University of California* (2025) PERB Order No. Ad-525-H, where two employee organizations seek to accrete the same positions or classifications to their own bargaining units, each has a strong interest in ensuring PERB does not mistakenly assign those positions to the other's

bargaining unit without their participation. (*Id.* at p. 16.) Joinder, or alternatively, consolidation of multiple pending cases, ensures full presentation of the issues and avoids contradictory results.

However, the Board has promulgated other regulations that address when a party may join a representation dispute under specific procedural circumstances. Foremost among these are regulations governing an employee organization's intervention into another employee organization's request for recognition. In cases arising under HEERA, PERB Regulation 51040 requires an organization to file its intervention within 15 workdays following the posting of a notice of a request for recognition, and to submit proof of at least 30 percent employee support in the unit claimed to be appropriate. If no organization successfully intervenes in a request for recognition, the original petitioner demonstrates majority support, and the employer does not dispute the appropriateness of the proposed bargaining unit, the Board will certify the petitioner as the exclusive representative of the unit unless the employer voluntarily recognizes. (§ 3577(a)(2)(A); PERB Reg. 51096.) It would nullify the strict proof of support requirements for intervention if joinder could be used as an alternative procedure to gain party status and intervene in a request for recognition.¹⁰ Because

¹⁰ PERB Regulations 32165 and 32166 establish additional procedures for a party to join a hearing on a representation matter. Regulation 32165 allows a party to join a representation hearing as a "limited party," which includes "the right to make an oral statement on the record and to file a written brief." A limited party is not required to provide proof of employee support. In contrast, Regulation 32166 permits a party to join a representation hearing as a full party provided it submits proof of at least 10 percent employee support of a unit in dispute at the hearing, or of a proposed unit that overlaps a unit in dispute. However, these procedures are only available to third parties wishing to join a hearing already necessitated by a dispute over the appropriateness of a proposed bargaining unit. (See *Hartnell Community College*

the proof of support requirements for unit modification petitions contained in Regulation 32781(e)(2) are analogous to the requirements for intervention, they also cannot be avoided by an application for joinder.

Here, as we have explained, UPTE's claim that certain positions or classifications should be placed in the existing HX bargaining unit must be dismissed for failure to provide proof of employee support. It would be anomalous to permit UPTE to accomplish the same thing as a joined party to SSAP-UAW's request for recognition that it cannot achieve through its own unit modification petitions without proof of support for the reasons discussed in this decision. Indeed, permitting joinder for no other reason than that UPTE believes the disputed positions would be more appropriately placed in the HX unit would undermine employees' right to be represented by an organization of their own choosing and the purpose of PERB Regulation 32781(e)(2), as discussed above, and would therefore unduly impede processing of the request for recognition. To the extent UPTE's reasons for joinder are distinct from the claims and arguments set forth in its unit modification petitions, OGC may grant UPTE's application if the requirements of Regulation 32164 are met.

ORDER

The Public Employment Relations Board hereby DENIES the University Professional and Technical Employees, Communication Workers of America Local 9119's appeal from the Administrative Determination. The unit modification petitions

District (1978) PERB Decision No. 54, p. 9 (Member Cossack concurring in part and dissenting in part.)

filed in case numbers SF-UM-913-H, SF-UM-914-H, SF-UM-915-H, and SF-UM-916-H are hereby DISMISSED WITHOUT PREJUDICE.

Chair Banks and Member Krausse joined in this Decision.