



**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,

Petitioner,

and

STUDENT SERVICES AND ADVISING
PROFESSIONALS – UNITED AUTO
WORKERS,

Interested Party.

Case No. SF-UM-930-H

PERB Order No. Ad-530-H

July 15, 2025

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

Before Banks, Chair; Krantz and Krausse, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Petitioner 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

determination at issue, OGC dismissed a unit modification petition that UPTE filed pursuant to the Higher Education Employer-Employee Relations Act (HEERA) and PERB Regulations.¹ For the following reasons, we affirm in part, reverse in part, and remand for further proceedings consistent with this decision.

BACKGROUND

This appeal marks the latest stage of a conflict between two unions: UPTE and Interested Party Student Services and Advising Professionals – United Auto Workers (UAW). Each of the two unions has sought to represent certain unrepresented classifications at the University of California (UC). We recounted the dispute’s origins in *Regents of the University of California* (2025) PERB Order No. Ad-527-H (*Regents*). Below, we recap and supplement that history, including what has occurred since *Regents* issued.

I. PERB’s Decision Creating the Residual Healthcare Professionals Unit

In a landmark decision establishing bargaining units for UC employees, the Board created two bargaining units for non-physician, professional patient care employees: a nursing unit for most positions requiring a registered nurse license (the NX unit), and a residual patient care professional unit for most other patient care professionals (the HX unit). (*Unit Determination for Professional Patient Care Employees of the University of California* (1982) PERB Decision No. 248-H, p. 2.)

UPTE became the exclusive representative of the HX unit in 1997 and continues in that role today. The HX unit includes a wide variety of employees,

¹ HEERA is codified at Government Code section 3560 et seq. All statutory references herein are to the Government Code. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

including, as most relevant here: Behavioral Health Counselors, Case Managers, Child Life Specialists, Clinical Social Workers, Counseling Psychologists, Counseling Therapists, Dietitians, Genetic Counselors, and Pharmacists. A high percentage of HX unit employees work for hospitals and clinics affiliated with UC's five medical centers, where they serve UC patients. A lower percentage are campus-based, serving UC students as part of student-facing health centers and mental health programs.

II. UPTE's October 2024 Unit Modification Petitions

On October 24, 2024, UPTE filed a unit modification petition seeking to add the Health Educator II and Health Educator III titles to the HX unit.² In the same week, UPTE filed three other unit modification petitions seeking to add more titles to the HX unit: Student Disability Specialist II, III, and IV, Student Life & Development Specialist III, and Advocate IV.³

UPTE's unit modification petition concerning Health Educators explained that they work in two distinct roles: (1) they serve patients at UC medical centers; and (2) they serve students at UC campuses. UPTE more fully described these dual roles as follows, using the acronym "HE" to refer to Health Educators:

"At UC's medical facilities, HEs educate patients on managing their disease, for example how to monitor glucose levels and count carbohydrates . . . HEs work side-by-side with HX Unit Dietitians to treat the same patients. The Dietitians provide further detail to the patient about their specific nutritional needs, for example the level of potassium they should consume . . . The work of HEs

² Dates refer to 2024 until we note otherwise in footnote 6, page 9, *post*.

³ We take administrative notice of all records in UPTE's unit modification cases, designated with the following PERB case numbers: SF-UM-913-H, SF-UM-914-H, SF-UM-915-H, and SF-UM-916-H.

and HX Unit Dietitians overlap to such a substantial degree that the University requires some HEs to be licensed Dietitians and employees often transfer from HE to Dietitian and vice versa. HEs further work with HX Unit Case Managers, who coordinate care for patients, when patients require assistance setting up their home health equipment and as required as part of the discharge process. HX Unit Pharmacists also refer patients to HEs when education is required for their prescribed medication.

[¶]. . . [¶]

“At UC’s campuses, HEs focus on public health and run programs and one-on-one visits with students to discuss their behavior and habits around certain activities, including drinking, smoking, sexual relations, and substance use. They provide outreach services and preventative healthcare to students . . . Just like at the medical centers, HEs at UC campuses work side-by-side with HX Unit Dietitians. They work together to organize and run educational events, outreach and workshops, where Dietitians educate students on diet and nutrition and HEs educating students on sexual health, substance abuse, and mental health. HX Unit Counseling Psychologists and HX Unit Clinical Social Workers also refer students to HEs for health education . . . And, in turn HEs will coordinate with HX Unit Counseling Psychologists, Clinical Social Workers, and Behavioral Health Counselors on their ongoing education with those students.”

UPTE filed no proof of support with its unit modification petitions. A unit modification petitioner need not submit proof of support when it seeks to add classifications that would not increase the bargaining unit in question by more than 10 percent. (PERB Reg. 32781(e)(1); *Regents, supra*, PERB Order No. Ad-527-H, p. 2, fn. 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.”].) However, as explained in *Regents, supra*, p. 9, there is an exception to this rule when a second union files a request for recognition or petition for certification for an appropriate unit that includes classifications at issue in the unit modification petition, and the second union provides sufficient proof of support.

III. UAW’s Request for a New Student Services and Advising Professionals Unit

On November 8, 2024, UAW filed a request for recognition (Request) in a proposed new “Student Services and Advising Professionals” (SSAP) unit.⁴ Part IV of UAW’s Request, titled “Description of Proposed Unit,” stated that the SSAP unit “SHALL INCLUDE: All student services and advising professionals” in 15 title series at UC, “as well as any other employees employed under a different title and performing substantially similar work.” The title series UAW listed in Part IV included the series at issue in UPTE’s pending unit modification petitions, though UAW sought a broader range of titles in each series: Health Educator I-IV, Student Disability Specialist I-IV, Student Life & Development Specialist I-IV, and Advocate III-IV.⁵

UAW submitted proof of support from over 50 percent of the employees in the proposed SSAP unit.

⁴ We take administrative notice of all records in Case No. SF-RR-1050-H.

⁵ The remaining 11 title series in UAW’s Request were as follows: Academic Achievement Counselors, Admissions Recruitment Specialists, Career Services Specialists, Curriculum Planners, Financial Aid Officers, Student Academic Specialists, Student Affairs Officers, Student Academic Advisors, Registrar Specialists, Industry Alliance Specialists, and Student Services Advisors.

IV. OGC's Determination as to the Impact of UAW's Request on UPTE's Petitions

By letter dated November 25, OGC notified all parties that because UAW's Request included the titles at issue in UPTE's unit modification petitions, PERB Regulation 32781(e)(2) required OGC to dismiss any of the petitions for which UPTE could not promptly provide at least 30 percent proof of support.

On November 26, OGC added UPTE as an interested party in UAW's Request.

On December 3, UPTE responded to OGC's November 25 letter. UPTE's response: (1) disputed OGC's interpretation of PERB Regulation 32781(e)(2); and (2) requested that OGC consolidate the unit modification petitions with UAW's Request.

On December 6, OGC issued an Order to Show Cause (OSC) as to why it should not dismiss UPTE's unit modification petitions for failure to submit proof of support.

On December 11, UPTE responded to the OSC. Among other arguments, UPTE reiterated its challenge to the appropriateness of the unit UAW sought in its Request.

On December 17, OGC dismissed UPTE's unit modification petitions for failure to submit proof of support.

On December 19, UPTE filed a joinder motion as to UAW's Request. This motion requested that, beyond UPTE's existing status as an interested party in UAW's Request, OGC should permit UPTE to participate as a full party.

V. UC's Refusal to Grant Recognition and UAW's Petition for Board Investigation

In responding to UAW's Request, UC was bound to follow HEERA section 3574, which states that the employer "shall" grant recognition absent any the circumstances set forth in section 3574(a), (b), (c), or (d). Only one of these circumstances is at issue here. Specifically, under section 3574(b), the employer shall not grant recognition if:

"Another employee organization either files with the employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. If the claim is evidenced by the support of at least 30 percent of the members of the proposed unit, a question of representation shall be deemed to exist and the board shall conduct a representation election pursuant to Section 3577. Proof of that support shall be submitted to either the board or to a mutually agreed upon third party."

Thus, section 3574(b) contemplates two distinct possibilities: another union may either challenge the appropriateness of the unit, or it may submit a competing claim of representation together with proof of support from at least 30 percent of the proposed unit.

Here, in a letter dated December 20, UC denied recognition because UPTE disputed the SSAP unit's appropriateness. UC took a neutral position on the dispute between UPTE and UAW.

PERB Regulation 51090(a) provides that if an employer denies a request for recognition, and the requesting union wishes to continue pursuing recognition, the union must file a petition for Board investigation. Here, UAW did so on December 26.

PERB Regulation 51096 provides that, after a union has filed a petition for Board investigation:

“If the Board determines (1) the employee organization requesting recognition has demonstrated proof of support of more than 50 percent of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the employer has not granted recognition, the Board shall certify the petitioner as the exclusive representative.”

By the time UAW filed its petition for Board investigation, the criteria set forth in Regulation 51096 were undisputed save one. The only question that remained was whether the SSAP unit was an appropriate unit.

VI. Further Litigation Regarding UPTE’s Petitions and UAW’s Request

On December 26, UAW opposed UPTE’s joinder motion. In this opposition, UAW made the following representations, among others:

“[UAW]’s proposed unit is an appropriate unit. It is comprised of nearly 5,000 similarly situated, unrepresented employees who administer advising, support and other related services to University students.

[¶]. . . [¶]

“[T]he disputed classifications are not healthcare classifications. The employees in these classifications are not healthcare employees, they do not work in healthcare facilities, and their job duties do not involve patient care.

[¶]. . . [¶]

“The job duties of these employees do not involve patient care and have no connection to healthcare. Because these employees’ duties are unrelated to healthcare, UPTE resorts to exceeding tenuous arguments. UPTE frequently analogizes these employees’ role in ‘advising’ students on

non-healthcare related matters to healthcare employees’ role in ‘advising’ patients.” (Emphasis supplied.)

On January 6, 2025, UPTE appealed OGC’s determination to dismiss its unit modification petitions.⁶

On January 16, UAW responded to UPTE’s appeal. Among other contentions, UAW reiterated that “none of the employees at issue are healthcare employees.”

On January 17, OGC stayed further processing of UAW’s Request pending the Board’s resolution of UPTE’s appeal regarding its unit modification petitions.

On April 9, we resolved UPTE’s appeal by issuing *Regents, supra*, PERB Order No. Ad-527-H. There, we explained there are two competing interests in representation cases: stable and harmonious labor relations based on appropriate bargaining units, and employee free choice. (*Id.* at p. 12.) We further explained that as part of balancing these interests: (1) precedent normally prioritizes a petition that involves a question concerning representation over a conflicting petition that does not; and (2) PERB Regulation 32781(e)(2) therefore requires a unit modification petitioner to provide at least 30 percent proof of support when the titles at issue in its petition are also included in a “pending” request for recognition. (*Id.* at p. 14.) Though UAW filed its Request after UPTE filed its petitions, UAW’s Request was “pending” once it was on file. (*Id.* at pp. 7-8.) Accordingly, UPTE had to collect at least 30 percent proof of support if it wished to pursue unit modification petitions covering positions at issue in UAW’s Request.

⁶ All further dates refer to 2025.

On these grounds, we dismissed UPTE's unit modification petitions without prejudice to refiling them later. (*Regents, supra*, PERB Order No. Ad-527-H, pp. 2-3.) We explained: "If for any reason the disputed positions or classifications remain unrepresented upon the conclusion of PERB's processing UAW's request for recognition, UPTE may re-file its unit modification petitions." (*Id.* at p. 19.)

VII. Events Following *Regents*

On April 10—the day after we issued *Regents*—three events occurred. First, OGC lifted its stay regarding UAW's Request. Second, OGC denied UPTE's joinder motion in that case. Third, UPTE initiated the current case by filing a new unit modification petition (Renewed Petition), seeking to add to the HX unit the titles of Health Educator I through Health Educator IV. This time, UPTE provided at least 30 percent proof of support. The Renewed Petition stated that the total number of employees in these classifications was 356, which would increase the HX unit by less than 10 percent. The Renewed Petition also reiterated UPTE's earlier contention that certain Health Educators serve patients at UC medical centers while others serve students at UC campuses.

On April 11, OGC issued an OSC as to why it should not dismiss the Renewed Petition. OGC acknowledged that *Regents* had dismissed UPTE's prior petitions without prejudice, but OGC interpreted *Regents* to mean that UPTE could only refile as to any titles that remained unrepresented after proceedings finished with respect to UAW's Request. OGC also noted that while UPTE had provided proof of support, it had not done so by the deadline to intervene in the Request.

On April 14, OGC afforded UC the opportunity to either reiterate or change its denial of recognition in response to UAW's Request.

On April 18, UC modified its prior response to the Request. UC stated that it had granted UAW recognition, while cautioning as follows:

“The University notes that UPTE has filed a further unit modification petition, SF-UM-930-H, seeking to add the classifications Health Educator 1-4 to the HX unit. These classifications are also included in the SSAP unit. PERB has issued an Order to Show Cause why the petition should not be dismissed because it is barred by the Board's decision in [*Regents*], *supra*, PERB Order No. Ad-527-H, and because UPTE's proof of support was not timely submitted.

“The University wishes to clarify that it will comply with all future PERB orders in these and any other related matters. If UPTE's unit modification petition is ultimately permitted to go forward, it may become necessary to remove the petitioned-for classifications from the SSAP unit.”

Following receipt of UC's letter dated April 18, OGC informed the parties that PERB had updated its records to reflect UC voluntarily recognizing UAW “as the exclusive representative of a unit of student services and advising employees.” (Emphasis supplied.)

On May 7, after UPTE and UAW responded to the OSC in this case, OGC issued its administrative determination dismissing UPTE's Renewed Petition for the reasons outlined in the OSC. UPTE then timely filed this appeal.

DISCUSSION

We agree with OGC that the law of the case dictates that UPTE could re-file with respect to any positions that “remain unrepresented upon the conclusion of PERB's processing” the Request. (*Regents, supra*, PERB Order No. Ad-527-H, p. 19.)

For the following reasons, this leads us to conclude that the Renewed Petition cannot proceed with respect to Health Educators serving students at UC campuses, but it may proceed as to Health Educators serving patients at UC medical centers.

As noted above, Part IV of UAW's Request, titled "Description of Proposed Unit," stated that the SSAP unit "SHALL INCLUDE: All student services and advising professionals" in 15 title series at UC, "as well as any other employees employed under a different title and performing substantially similar work." Thus, "student services and advising" is a descriptive phrase delineating the professionals at issue: employees in 15 title series whose work involves student services and advising, as well as those "employed under a different title and performing substantially similar work." The description thus covered Health Educators who serve students but not those who work at UC medical centers, as the latter group serves patients, not students. Indeed, all the other titles listed in the Request serve students, not patients.

Moreover, the representations UAW made in opposing UPTE's joinder motion erase any remaining doubt. As noted above, UAW wrote:

"[UAW]'s proposed unit is an appropriate unit. It is comprised of nearly 5,000 similarly situated, unrepresented employees who administer advising, support and other related services to University students.

[¶]. . . [¶]

"[T]he disputed classifications are not healthcare classifications. The employees in these classifications are not healthcare employees, they do not work in healthcare facilities, and their job duties do not involve patient care.

[¶]. . . [¶]

“The job duties of these employees do not involve patient care and have no connection to healthcare. Because these employees’ duties are unrelated to healthcare, UPTE resorts to exceeding tenuous arguments. UPTE frequently analogizes these employees’ role in ‘advising’ students on non-healthcare related matters to healthcare employees’ role in ‘advising’ patients.” (Emphasis supplied.)

UAW made these representations as part of successfully convincing OGC to deny UPTE’s motion to be joined as a full party to the Request for purposes of challenging the contours of UAW’s proposed SSAP unit. UAW later reiterated the same position in a brief to the Board in *Regents, supra*, PERB Order No. Ad-527-H. We afford meaning to these unequivocal representations and conclude that UAW’s newly created SSAP unit includes Health Educators serving students and excludes Health Educators serving patients at UC medical centers.⁷

HEERA allows the split reflected in UAW’s representations. As we explained in *Regents of the University of California* (2025) PERB Order No. Ad-525-H, HEERA’s “presumption against splitting occupational groups fits best with the other unit determination criteria” if “we apply the presumption functionally rather than mechanistically.” (*Id.* at p. 22.) PERB’s functional approach means that “keeping an occupational group together can lead to splitting a title or classification.” (*Ibid.*) Also, the parties may wish to propose new titles differentiating Health Educators who serve students from those who serve patients. (See *id.* at pp. 35-36 [splitting Visiting

⁷ As noted above, UC’s April 18 letter granting UAW recognition was conditional, acknowledging that PERB would have the final say on the extent to which the SSAP unit would include or exclude Health Educators. This was an issue that PERB had not analyzed as of that time. Rather, on April 10, OGC had denied the joinder motion through which UPTE sought to litigate such issues. Then, on April 18, OGC closed the matter based on UC’s voluntary but conditional grant of recognition.

Assistant Professor title as well as Assistant Adjunct Professor title, and approving parties' agreement to re-title a distinct subset of these positions as "Math Fellows"].)

Accordingly, there was no cause to dismiss the Renewed Petition in its entirety. However, if UPTE wishes to continue pursuing the Renewed Petition, it must file an amendment excluding Health Educators who serve students.

ORDER

We AFFIRM IN PART AND REVERSE IN PART the administrative determination in Case No. SF-UM-930-H, dated May 7, 2025. The matter is REMANDED to the Office of General Counsel for further processing consistent with this decision.

Chair Banks and Member Krausse joined in this Decision.