



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

FRESNO UNIFIED SCHOOL DISTRICT,

Employer,

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS,

Petitioner,

and

FRESNO TEACHERS ASSOCIATION,
CTA/NEA,

Exclusive Representative.

Case No. SA-SV-192-E

PERB Order No. Ad-531

July 28, 2025

Appearances: Atkinson, Andelson, Loya, Ruud, and Romo by Peter A. Schaffert, Attorney, for Fresno Unified School District; Weinberg, Roger & Rosenfeld by Caren P. Sencer, Attorney, for International Association of Machinists and Aerospace Workers; California Teachers Association by Theresa Witherspoon, Attorney, for Fresno Teachers Association, CTA/NEA.

Before Banks, Chair; Krantz, Paulson and Krausse, Members.

DECISION

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) on an interlocutory appeal from an administrative determination (AD) concerning a severance petition that the International Association of Machinists and Aerospace Workers (IAMAW) filed under the Educational Employment Relations Act

(EERA).¹ In its initial severance petition (Initial Petition), IAMAW sought to sever the Roofers and Lead Roofers classifications from a unit currently represented by Fresno Teachers Association, CTA/NEA (FTA).²

IAMAW later amended its petition (Amended Petition), seeking to place the Roofers and Lead Roofers classifications into an existing unit represented by IAMAW. FTA filed a motion to dismiss the Amended Petition arguing that, under PERB Regulation 33700, a severance petition may only be used to create a new standalone unit, not to sever workers and transfer them to an existing unit.³ FTA also contended that the Amended Petition was not timely, because it was filed outside the window period but does more than correct technical errors. IAMAW disputes FTA's contentions. IAMAW also argues that FTA is barred from raising its concerns about transferring the classifications into an existing unit because a PERB Board Agent processed a similar classification transfer in 2017.

Having reviewed the record and the parties' arguments, we find the Amended Petition does not comply with the requirements of PERB Regulation 33700 and therefore sustain FTA's appeal. We remand the matter for processing of the Initial Petition.

¹ EERA is codified at Government Code section 3540 et seq. Unless otherwise specified, all statutory references herein are to the Government Code.

² FTA previously opposed IAMAW's Initial Petition as untimely and improperly filed. PERB's Office of General Counsel (OGC) determined that the Initial Petition was timely, and the Board upheld the determination, remanding the matter to OGC. (*Fresno Unified School District* (2024) PERB Order No. Ad-521 (*Fresno*).)

³ PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.

FACTUAL FINDINGS AND PROCEDURAL HISTORY

FTA is the exclusive representative for a unit of Building Trades Professionals, which includes the classifications of Lead Roofers and Roofers (Roofers or Roofer classification). FTA formerly represented another classification, Concrete Worker/Finisher, but in 2017 IAMAW filed a representation petition to sever that classification from FTA and transfer that classification to a unit represented by IAMAW.⁴

At issue in the instant dispute is the Roofer classification, which is currently comprised of three employees. On March 21, 2024, IAMAW filed the Initial Petition seeking to sever the Roofers from the Building Trades Professionals unit, and to establish a new unit comprised of only the Roofers. FTA did not agree to the severance and filed its opposition to the Initial Petition on April 25.

On May 22, 2024, based on the information in the Initial Petition, OGC determined that IAMAW had submitted adequate proof of support to meet the requirements of PERB Regulation 33050(b). OGC instructed the District to file its decision regarding recognition pursuant to PERB Regulation 33190 and noted that the District's response must be a denial since the incumbent union opposed severance. Accordingly, the District denied recognition on May 30 because of FTA's opposition to

⁴ On May 12, 2017, IAMAW filed a petition to sever the Concrete Worker/Finisher classification from FTA's bargaining unit. IAMAW filed an amended petition on September 8, 2017, revising the unit description to request that the severed Concrete Finishers would join the IAMAW Crafts Unit and not form a new standalone unit. Neither FTA nor the District opposed that petition, and PERB updated its records to reflect that IAMAW would represent the Concrete Worker/Finisher classification going forward.

the Petition. On June 17, IAMAW filed a request for the Board to investigate and determine whether the Initial Petition was timely filed. OGC held a videoconference with the parties on June 26 regarding the petition and to clarify the information the parties were obligated to provide. Subsequently, on June 28, OGC issued a Notice of Board Investigation and Request for Additional Information requiring the parties to provide specific information.

On July 25, 2024, OGC issued an order to show cause (OSC) why PERB should not find that the Initial Petition was timely filed. On August 9, FTA filed its response to the OSC and on August 23, IAMAW filed a reply to FTA's OSC response. On September 20, OGC issued an order finding that the Initial Petition was timely filed.

On September 30, 2024, FTA filed a request with OGC to join in an interlocutory appeal of the administrative determination to the Board, which OGC granted on October 16, 2024. On appeal, the Board affirmed OGC's determination, remanding the matter to OGC for further processing. (*Fresno, supra*, PERB Order No. Ad-521, pp. 2, 5 & 8-9.)

On remand, OGC held an informal conference on February 5, 2025. That same day, IAMAW filed the Amended Petition. In the Amended Petition, IAMAW revised the description of the proposed unit to indicate that it was requesting to move the "[Roofers] into the already existing unit represented by [IAMAW]." Under the "Shall Exclude" section of the form, IAMAW stated that the new unit would exclude, "[a]ll other classifications." The number of employees in the proposed unit remained listed as three employees. On March 20, FTA filed a motion to dismiss the Amended

Petition. OGC transferred the case to PERB's Division of Administrative Law on March 24. IAMAW filed its response to FTA's motion to dismiss on April 4. On April 24, the assigned administrative law judge (ALJ) denied FTA's motion to dismiss the Amended Petition, finding that the Amended Petition was timely and appropriately filed.

On May 5, FTA filed with the Board Agent a request to certify an interlocutory appeal to the Board itself. IAMAW filed its opposition on May 9. The ALJ certified FTA's request for interlocutory appeal pursuant to PERB Regulation 32200 on May 13.

DISCUSSION

When appealing an administrative determination, the appellant must demonstrate how or why the challenged decision departs from the Board's precedents or regulations. (*City and County of San Francisco* (2022) PERB Order No. Ad-497-M, p. 15; *Children of Promise Preparatory Academy* (2018) PERB Order No. Ad-470, p. 4.)

Here, the crux of FTA's argument is that the ALJ's decision is a departure from PERB Regulations and precedent because PERB Regulation 33700, which governs severance procedures under EERA, does not permit transferring a classification from one represented bargaining unit to another existing bargaining unit. Essentially, FTA argues, PERB Regulation 33700 only permits severing the classifications at issue in the petition into a separate new unit.

We proceed to summarize the main reasons why FTA is correct. We also address the parties' arguments as to the applicability of judicial estoppel in the instant dispute. Finally, we explain that although we sustain FTA's motion to dismiss the Amended Petition, we remand the case for processing of IAMAW's Initial Petition.

I. Severance

PERB Regulation 33700 governs severance requests under EERA. Historically, a severance petition under EERA seeks to form a separate unit comprised only of the classifications subject to the petition. (*Los Rios Community College District* (2018) PERB Decision No. 2587 (*Los Rios*); *Compton Unified School District* (2010) PERB Order No. Ad-385; *Oakland Unified School District* (2001) PERB Decision No. 1464; *Lodi Unified School District* (2001) PERB Decision No. 1429; *Long Beach Community College District* (1999) PERB Decision No. 1315; *Los Angeles Unified School District* (1998) PERB Decision No. 1267 (*LAUSD*); *San Juan Unified School District* (1995) PERB Decision No. 1082; *Temple City Unified School District* (1995) PERB Decision No. 1110.) Moreover, since their inception in the private sector, severance petitions have been used to seek to create new, standalone units. Early analysis of severance describes it as a mechanism whereby a group of employees can “break away from the historical unit by a vote for separate representation” to create “a bargaining unit limited to that group.” (*Mallinckrodt Chem. Works* (1966) 162 NLRB 387, 392.)⁵

Here, we examine the language of PERB Regulation 33700 and the criteria PERB utilizes in applying that regulation, to support our determination that severance

⁵ California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, and PERB accordingly considers federal precedent only for its potential persuasive value. (*The Accelerated Schools* (2023) PERB Decision No. 2855, pp. 20-31; *Operating Engineers Local Union No. 3, AFL-CIO (Wagner et al.)* (2021) PERB Decision No. 2782-M, p. 9, fn. 10.) Furthermore, public sector labor law differs markedly from private sector labor law on unit issues, including in preferencing labor stability over employee free choice. (*LAUSD, supra*, PERB Decision No. 1267, pp. 3-5; see also *Regents of the University of California v. Public Employment Relations Bd.* (2020) 51 Cal.App.5th 159, 192.) While not binding, we find the NLRB

cannot be used to transfer job classifications from one unit to a different, preexisting unit containing other classifications.

A. Regulatory Language

PERB Regulation 33700 governs severance requests and states:

“(a) An employee organization may file a request to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provisions of Article 2 (commencing with Section 33050). All provisions of Articles 2 and 3 of this Subchapter shall be applicable to a severance request except as provided in this Article 6.

“(b) Whenever the conditions of Government Code Section 3544.1(c) exist, a severance request for recognition or intervention must be filed in accordance with Section 32135 with the employer during the ‘window period’ as defined by Section 33020.

“(c) Any amendment to a request for recognition or intervention to add classifications or positions which are included in an established unit must be filed in the manner set out in Section 32135 during the ‘window period’ defined by Section 33020.”

At issue here is what limitations are imposed by the phrase, “. . . an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative” as used in PERB Regulation 33700(a). FTA contends that the modifier, “consisting of,” requires that the severed unit can only include a group of employees who are already members

descriptions of severance helpful in in the instant matter in demonstrating severance’s origins.

of a larger established unit represented by an incumbent exclusive representative—that is, the severance process can only create a new, standalone unit. IAMAW argues that as long as the new unit is “an appropriate unit,” then PERB’s analysis is satisfied, and the new unit may become part of a larger existing bargaining unit. In the AD denying FTA’s motion to dismiss the Amended Petition, the ALJ found that, “while an appropriate unit *may* consist solely of severed employees, PERB Regulation 33700 does not expressly *require* that an appropriate unit consist only of severed employees in a severance proceeding.” We disagree.

The rules of statutory interpretation require giving all words their plain language meaning. (See *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) In determining the plain language meaning of “consisting of,” the principle of statutory construction *expressio unius est exclusio alterius*—“the express mention of one thing is the exclusion of others”—is helpful. While not entirely dispositive, this principle is helpful here when coupled with how PERB Regulation 33700 has been traditionally applied.

Here, PERB Regulation 33700(a) defines the unit to be severed as “consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative.” No other bargaining units, employees, or classification types are included in the regulatory language. In viewing this language through the lens that the express mention of one thing is the exclusion of others, we find that the phrase “consisting of” as used in PERB Regulation 33700(a) signifies a term of limitation that creates an exhaustive, closed category. This comports with the plain meaning of “consisting of” which typically establishes a

complete enumeration where only the specifically identified components comprise the whole. Unlike inclusive language, like, “such as,” “including,” or “containing,” which permit additional unlisted items, “consisting of” generally implies completeness.

Under its interpretation, IMAAW would have us change “consisting of . . .” to something broader, like “including . . .” or “containing, among other employees” We decline to do so, and find that, as used in PERB Regulation 33700(a), “consisting of” means that the new unit shall be made up of “a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative” and no other, non-enumerated, employees.

That a severance request under EERA must be filed as a request for recognition also supports our conclusion. A request for recognition simply cannot be used to add employees to an existing bargaining unit. Rather, an employee organization that seeks to add employees to an existing unit must comply with PERB’s unit modification procedures.

We next discuss how this determination is consistent with PERB’s past analysis of severance cases.

B. Criteria Under PERB Regulation 33700

The criteria PERB utilizes in applying PERB Regulation 33700 and determining whether severance is appropriate supports our determination that severance creates a standalone unit. The primary factor PERB examines when evaluating a severance petition is whether the petitioner has shown that the proposed severed unit has a community of interest that is “separate and distinct” from other employees in the existing, larger bargaining unit to such an extent that collective bargaining is incapable

of addressing the needs of a discrete minority within the existing unit. (*City of Glendale* (2021) PERB Decision No. 2773-M, pp. 26-27; *Los Rios, supra*, PERB Decision No. 2587, pp. 5-6 & adopting proposed decision at p. 13.) PERB's severance precedent makes no reference to comparing the community of interest between two established bargaining units. (*Ibid.*)

Moreover, in evaluating severance petitions, the Board analyzes dilution and fragmentation issues (see, e.g., *County of Orange* (2016) PERB Decision No. 2478-M, pp. 3-4; *City of Glendale* (2007) PERB Order No. Ad-361-M, pp. 5-6), and also looks at bargaining history to determine whether collective negotiations are incapable of addressing the unit members' varied interests. (*County of Monterey* (2022) PERB Decision No. 2821-M, p. 19; *City of Pasadena* (2021) PERB Decision No. 2788-M, p. 10; *Los Rios, supra*, PERB Decision No. 2587, pp. 5-6; *LAUSD, supra*, PERB Decision No. 1267, adopting proposed decision at pp. 49-50, 58.)

None of this precedent suggests that our task is to compare two existing units and determine which would better address the bargaining interests of the classifications at issue. Indeed, these factors demonstrate that severance does not permit the transfer of one group of employees from an existing bargaining unit to another existing unit. Rather, these factors support our conclusion that severance is a process whereby classifications are carved out of a larger bargaining unit into their own, standalone unit.

Nothing in our precedent prevents a severed unit from later filing a petition for unit modification seeking to be added to an existing unit. However, that is a separate process, and not one contemplated by severance procedures.⁶

Because the Amended Petition does not comply with the requirements of PERB Regulation 33700, FTA's appeal is sustained.⁷

II. Judicial Estoppel

We briefly consider whether the ALJ or the Board itself is bound by the transfer of the Concrete Worker/Finisher classification from FTA to IAMAW in 2017.

The doctrine of judicial estoppel prohibits a party from successfully taking inconsistent positions in the same or different judicial proceedings. (*Alliance Judy Ivie Burton Technology Academy High, et al.* (2020) PERB Decision No. 2719, pp. 36-37 (*Alliance*); *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181 (*Jackson*).) Judicial estoppel applies when (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and

⁶ IAMAW argues that because FTA did not oppose a 2017 severance petition that transferred the Concrete Worker/Finisher classification to IAMAW, FTA is judicially estopped from opposing the instant petition. That is not the case. (See *post*, section II.)

⁷ IAMAW argues that we cannot grant the motion to dismiss the Amended Petition because there is a question of fact as to when FTA knew that IAMAW intended to transfer the Roofer classification to an existing IAMAW unit. However, whether and when FTA knew of IAMAW's intentions is immaterial, because the transfer of classifications from one unit into a different, preexisting unit is not proper under PERB Regulation 33700.

(5) the first position was not taken as a result of ignorance, fraud, or mistake.

(*Alliance, supra*, p. 37, citing *Jackson, supra*, p. 183.) The doctrine's purpose is to protect the integrity of the judicial process by preventing parties from playing fast and loose with the courts. (*Alliance, supra*, p. 37, citing *Jackson, supra*, p. 181.)

Here, IMAAW cannot satisfy the first and second elements, as FTA did not take a legal position and the 2017 petition did not involve a judicial or quasi-judicial proceeding. In 2017, a PERB Board Agent permitted the transfer of the Concrete Worker/Finisher classification from a unit represented by FTA to a unit represented by IMAAW. In that instance, neither FTA nor the employer opposed IMAAW's petition. Because no party requested that PERB investigate the petition, the Board Agent processed and closed the petition.

First, FTA's non-opposition to the 2017 petition is not a legal position. IMAAW has not cited, and cannot cite, judicial estoppel precedent indicating that because an opponent conceded a prior case it must concede a second case; the judicial estoppel principle simply does not stand for that proposition. Moreover, the Board Agent was acting in a ministerial capacity, and there was no petition for investigation under section 3544.5 that would have permitted PERB to investigate and make determinations. (See PERB Reg. 33237.) Thus, FTA's non-opposition to a 2017 petition severing the Concrete Worker/Finisher classification does not estop FTA from opposing the severance described in the Amended Petition.⁸

⁸ IMAAW's 2017 petition never came before the Board, and we express no opinion on it other than to note that FTA did not oppose it, making it more akin to a unit modification petition transferring a classification from one unit to another pursuant to PERB Regulation 32781(c), and we see no reason to disturb IMAAW's representation of the Concrete Worker/Finisher classification.

III. Conclusion

We sustain FTA's appeal and grant its motion to dismiss the Amended Petition because the Amended Petition does not comply with the requirements of PERB Regulation 33700. IAMAW's Initial Petition, which it filed on March 21, 2024, was properly and timely filed and survives without the proposed amendments. Accordingly, we remand the matter for processing of the Initial Petition.

ORDER

The interlocutory appeal in Case No. SA-SV-192-E that Fresno Teachers Association, CTA/NEA filed on March 20, 2025, challenging an Administrative Determination dated April 24, 2025, is SUSTAINED. In continuing to process the Initial Petition that is currently pending in this case, the Office of General Counsel and Division of Administrative Law shall do so in a manner consistent with this Order.

Members Krantz, Paulson, and Krausse joined in this Decision.