STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN JOAQUIN REGIONAL TRANSIT DISTRICT, Employer, and AMALGAMATED TRANSIT UNION, LOCAL 276, Exclusive Representative.	SMCS Case No. 17-2-315 Case No. SA-UM-873-M Request for Judicial Review PERB Decision No. 2650-P PERB Decision No. 2650a-P August 30, 2019

Appearances: Palmer Kazanjian Wohl Hodson by Treaver K. Hodson, Alexandra M. Asterlin, and Casey M. Blanas, Attorneys, for San Joaquin Regional Transit District; Neyhart, Anderson, Flynn & Grosboll by William J. Flynn and Benjamin K. Lunch, Attorneys, for Amalgamated Transit Union, Local 276.

Before Shiners, Krantz, and Paulson, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for judicial review. The San Joaquin Regional Transit District (District) asks the Board to authorize judicial review of the Board's decision in *San Joaquin Regional Transit District* (2019) PERB Decision No. 2650-P. In that decision, the Board granted a Petition for Clarification (Petition) filed by Amalgamated Transit Union, Local 276 (Local 276) and added the unrepresented classification of Transit Ambassador (TA) into the District's single, broad bargaining unit, which Local 276 exclusively represents. For the following reasons, we deny the District's request.

DISCUSSION

The District is one of approximately 18 public transit districts established under the transit district enabling acts found in the Public Utilities Code.). The District's enabling act is codified at Public Utilities Code sections 50000 through 50507, including labor relations provisions found at sections 50120-50126. Pursuant to Public Utilities Code section 50121, the State Mediation and Conciliation Service (SMCS) is directed to establish appropriate bargaining unit "boundaries." Before the Legislature transferred SMCS from the Department of Industrial Relations (DIR) to PERB in July 2012, SMCS transit district unit determinations could be appealed to the Director of DIR. (*IBEW Local 889 v. Aubry* (1996) 42 Cal.App.4th 861, 867 (*Aubry*).) After this transfer, PERB's Board assumed jurisdiction over appeals from SMCS determinations in representation matters. (Gov. Code, § 3603, subd. (b); PERB Regs. 93025, subd. (d), 93060;[1] *San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-460-M, pp. 4-5; *San Diego Metropolitan Transit System* (2016) PERB Order No. Ad-441-M, p. 2, fn. 1.) Moreover, PERB adopted pre-existing transit act regulations that DIR had promulgated, without making any material changes. (PERB Regs. 93000-93080.)

The District's request cites two legal provisions to support its right to file the instant request. First, it cites the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). (Pub. Util. Code, §§ 99560-99570.4.) Under TEERA, unit determinations are not subject to judicial review unless PERB grants a party's request for judicial review based on a showing that the case is one of "special importance," or a party raises the unit issue as a defense to an unfair practice complaint. (*Id.* § 99562, subd.

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

(a).)[2] However, TEERA solely governs the Los Angeles County Metropolitan Transportation Authority, its supervisory employees, and unions involved in representing or seeking to represent such employees. (Pub. Util. Code, §§ 99560, subd. (e) & 99560.3.) Accordingly, TEERA does not provide a basis for the District's request.

Second, the District cites PERB Regulation 32500, which mainly implements TEERA, EERA, HEERA, JCEERA, and the Dills Act by establishing briefing deadlines for any request for judicial review and any response thereto, as follows:

> (a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, Chapter 7, or Chapter 8 of these Regulations, may file a request to seek judicial review within 20 days following the date of service of the decision. [The request] shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. . . .
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> (b) Any party shall have 20 days [to respond to a request for judicial review]. . . .
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> (c) The Board may join in a request for judicial review or may decline to join, at its discretion.
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> Note: Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code; and Section 99562, Public Utilities Code.

The first sentence of Regulation 32500 notes that requests for judicial review may not be filed when PERB has issued representation decisions under Chapters 5, 7, and 8 of its regulations. Those chapters correspond to three labor relations statutes that do not authorize

[2] This provision of TEERA mirrors analogous provisions found in four other labor relations statutes that PERB enforces. (See Educational Employment Relations Act (EERA), Gov. Code § 3542; Higher Education Employer-Employee Relations Act (HEERA), Gov. Code § 3564; State Employer-Employee Relations Act (Dills Act), Gov. Code § 3520; and Judicial Council Employer-Employee Relations Act (JCEERA), Gov. Code § 3524.73.)

parties to file such requests for judicial review with PERB: the Meyers-Milias-Brown Act,[3] the Trial Court Employment Protection and Governance Act,[4] and the Trial Court Interpreter Employment and Labor Relations Act.[5]

Regulation 32500 contains no such exception, however, for PERB representation decisions pertaining to public transit districts operating under the transit district enabling acts, such as the District. Chapter 9 of PERB Regulations governs such representation matters, and Regulation 32500 plausibly applies to Chapter 9 matters, at least by virtue of failing to exclude such matters. PERB Regulations thus provide the District with an argument that it was entitled to file the instant request. We therefore review the District's request on its merits, though we also note that Regulation 32500 may contain an oversight in failing to exclude representation matters arising under Chapter 9 of our regulations.[6]

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[3] The Meyers-Milias-Brown Act is codified at Government Code section 3500 et seq.

[4] The Trial Court Employment Protection and Governance Act is codified at Government Code section 71600 et seq.

[5] The Trial Court Interpreter Employment and Labor Relations Act is codified at Government Code section 71800 et seq.

[6] Regulation 32500 clearly applies to representation matters under Chapter 2 (EERA), Chapter 3 (Dills Act), Chapter 4 (HEERA), and Chapter 6 (TEERA), as those four statutes authorize requests for judicial review, and are listed in the regulation's "authorities cited" and "reference" sections required by California's Administrative Procedures Act (APA). (Gov. Code § 11349, subd. (e).) Moreover, after the Legislature enacted JCEERA in 2017, PERB began the process of adding JCEERA regulations under a new Chapter 10. JCEERA similarly permits requests for judicial review, and accordingly PERB's proposed update to Regulation 32500 does not exempt Chapter 10, but does list JCEERA in the authorities cited and reference sections. In contrast, the APA authorities and references listed under PERB Regulation 32500 do not include any of the transit district enabling acts. Most importantly, those acts do not authorize a party to file requests for judicial review with PERB, nor with DIR, which heard appeals from SMCS unit determination disputes prior to 2012. After the Legislature enacted Government Code section 3603 in 2012, transferring appellate jurisdiction over transit district unit determinations from DIR to PERB, the former DIR regulations became

Assuming that PERB Regulation 32500 provides the District with the right to have filed the instant request, we must determine whether this case meets the "special importance" standard set forth in the regulation. The Board has strictly construed that standard, to ensure "that the fundamental rights of employees to form, join and participate in the activities of employee organizations is not abridged. Further, the standard is also employed to prevent employee organizations' rights from being inhibited because if unit determinations by PERB are subject to numerous legal challenges, delays of implementation of the Board's decisions could occur." (*St. Hope Public Schools* (2019) PERB Order No. JR-29, p. 3 (*St. Hope*), quoting *California Virtual Academies* (2016) PERB Order No. JR-27, pp. 3-4 (internal citations omitted) (*CAVA*).)

Consequently, the Board will grant a request for review only if: (1) there is a novel issue presented; (2) the issue primarily involves construction of a statutory provision unique to the statute under consideration; and (3) the issue is likely to arise frequently. (*St. Hope*, *supra*, PERB Order No. JR-29, p. 3; *Burlingame Elementary School District* (2007) PERB Order No. JR-24, p. 3.) All three parts must be satisfied, meaning that PERB grants a request for review only in the narrowest of circumstances. (*St. Hope*, *supra*, p. 3; *CAVA*, *supra*, PERB Order No. JR-27, p. 4.)

The District argues that this case presents a novel issue because the Board had never before determined whether it is appropriate to add a classification of employees into an existing bargaining unit under a transit district act. However, the District concedes that the Board was not writing on a blank slate, given *Aubry*, *supra*, 42 Cal.App.4th 861, and prior DIR precedent, which explain the factors to consider in determining whether to add employees to an existing bargaining unit under the PUC transit acts. We applied the community of interest and accretion-

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Chapter 9 of PERB Regulations. It appears that, perhaps as a result of an oversight, PERB did not amend Regulation 32500 to exclude matters arising under Chapter 9.

specific factors set forth in *Aubry* to the facts in the record. In evaluating the traditional community of interest factors, we observed *Aubry's* instruction that system-wide units "are favored" under the transit district enabling acts, and noted that system-wide units are similarly considered optimum in transportation systems under federal law. (*San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, p. 10, fn. 10 & p. 13, citing *Aubry*, *supra*, 42 Cal.App.4th at p. 871.)

Aubry also directed us to consider the impact, if any, of the bargaining unit's history. We applied the established law and found the evidentiary record incomplete on this factor. While there is no dispute that the TA classification did not exist at the time the unit was certified, we found the evidentiary record insufficient to determine exactly when the TA classification came into existence relative to the effective date of the then-current labor agreement. Moreover, we did not find evidence that Local 276 clearly and unmistakably waived its right to file a unit clarification petition with SMCS when TA unit placement was not resolved during bargaining. We can only consider these questions based on the record the parties created.

The District therefore misses the mark in arguing that the instant case is distinguishable from *Aubry* because the District alleged TAs to have been "historically excluded employees." The District ignores that the TA classification was a relatively new classification, and that the record did not reflect that it was "historically excluded." The District also ignores DIR authority regarding such principles, cited in the decision. (*San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, p. 12.)[7]

[7] The District's argument is also unavailing in its reliance on *Castaic Union School District* (2010) PERB Order No. JR-25, p. 4 (*Castaic*). *Castaic* turned on interpreting the statutory definition of classified employees. Our conclusion that the TA classification belongs in the District's existing bargaining unit turned on a factual analysis of job duties, not on resolving a dispute over how to interpret a statutory category of employees.

Our interpretation of PERB Regulation 93080, determining when federal law is relevant and therefore must be applied, was also far from novel. The California Court of Appeal has addressed language identical to PERB Regulation 93080. (See *Santa Clara Valley Transp. Auth. v. Rea* (2006) 140 Cal.App.4th 1303, 1319 [interpreting language in Pub. Util. Code, § 100301 identical to that in PERB Reg. 93080].) The Court of Appeal, in turn, relied on a California Supreme Court decision construing Labor Code section 1148, which similarly requires the Agricultural Labor Relations Board to "follow applicable precedents of the National Labor Relations Act, as amended."[8] (*Id*. at pp. 1319-1320, citing *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 413; see also *Triple E Produce Corp. v. Agricultural Labor Relations Bd.* (1983) 35 Cal.3d 42, 48.) We analyzed the record facts under the rules gleaned from these judicial determinations; such application of law to facts does not constitute a novel issue. (*Regents of the University of California* (1998) PERB Order No. JR-18-H.)

To be sure, the District disagrees with the Board's decision that it was proper to add an eight-employee classification into the District's sole existing bargaining unit, but "its mere disagreement does not convert this otherwise pedestrian matter into an issue of novel or special importance." (*St. Hope, supra*, PERB Order. No. JR-29, p. 4.) Moreover, this case turned on a

[8] The Labor Management Relations Act of 1947 amended the National Labor Relations Act, which Congress enacted in 1935. (*San Joaquin Regional Transit District, supra,* PERB Decision No. 2650-P, p. 7, fn. 8.) Thus, Labor Code section 1148 and PERB Regulation 93080 require the respective boards to look to the same substantive federal law.

fact-intensive inquiry, which further counsels against granting the District's request for judicial review.[9] (*Id.*, p. 5.)

Finally, the District argues that the decision is novel because we allegedly applied PERB's unit modification procedures or standards to the instant matter, despite the fact that cases arising under the transit acts are subject to different regulations. We agree with the District that PERB's unit modification procedures differ from those procedures applicable to the transit acts, and noted this *contrast* in footnote 11 of our decision. (*San Joaquin Regional Transit District, supra*, PERB Decision No. 2650-P, p. 12, fn. 11.) Noting that contrast is most assuredly not the same as applying non-transit procedures to a transit district operating under the Public Utility Code, nor did we do so.

As we noted in the underlying decision, PERB Regulation 93005 authorizes SMCS to resolve both questions concerning representation (QCRs), as well as disputes as to whether a particular unit, or classification placement, is appropriate. (*Id.* at p. 9.) PERB's transit district regulations distinguish between petitions for clarification such as the instant one, when there is no QCR (see PERB Regulation 93005, subd. (c)), and petitions for certification where there is a QCR (see PERB Regulation 93005, subds. (a) and (b).) (*Ibid*.) As we explained in our decision:

> A QCR arises when there is a legitimate doubt whether the union has majority support in the bargaining unit. (*NLRB v. Financial Inst. Employees of Am., Local 1182* (1986) 475 U.S. 192, 198.) If a QCR exists, a union must demonstrate majority support among employees to be added to an existing unit. (*Teamsters Nat. United Parcel Service Neg. Cmte. v. NLRB* (D.C. Cir. 1994) 17 F.3d 1518, 1524.) In contrast, accretion allows employees to be added to an existing unit without an election or other demonstration of majority support. (*Aubry, supra*, 42 Cal.App.4th at p. 872.)

[9] The District's disagreement with our application of the record facts to the law is evidenced by its lengthy footnote 3 in its Judicial Review request. That footnote also relies on evidence outside of the record.

(*Ibid.*) This structure is similar to the National Labor Relations Board's law and procedure, where private sector law looks to factors including but not limited to the relative size of the unit and the group to be accreted. (See, e.g., *Boston Gas Co.* (1978) 235 NLRB 1354, 1355 [size of group to be accreted raises no QCR where no reason to question majority status of union].)[10]

In its judicial review petition, the District also raises a new issue, asserting that PERB Regulation 93015, subdivision (c) requires "a showing of interest" and that Local 276 did not submit the requisite employee authorizations. The District waived that argument by not raising it at all prior administrative stages. (*Edgren v. Regents of Univ. of Cal.* (1984) 158 Cal.App.3d 515, 520 ["Before seeking judicial review a party must show that he has made a full presentation to the administrative agency upon all issues of the case and at all prescribed stages of the administrative proceedings."].) The District's assertion is also untenable on its merits. PERB Regulation 93015 only concerns those situations presenting a question concerning representation. (See PERB Regulation 93015, entitled "Percentage of Valid Authorizations Required to Determine Existence of a Representation Dispute.") Where, as here, the small size of the proposed accretion provides no reason to question the continuing majority support of the incumbent union, there is no question concerning representation. Indeed, a petition for clarification of an existing bargaining unit, such as the Petition filed here, is only appropriate "in the absence of a question concerning representation." (PERB Regulation 93005, subd. (c).) We afford meaning to each part of Regulations 93005 and 93015, and require majority support only

[10] As we noted, PERB law applicable to other employers features a bright-line "ten percent rule" for determining whether a QCR exists, and we did not apply that standard to the instant case. (See *San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, at p. 12, fn. 11 and cases cited therein [noting distinctions between PERB law and cases arising under transit acts].)

in those cases in which there is a question concerning representation.[11] As we stated in the underlying decision, where, as here, "there are only eight employees in the TA classification as compared to approximately 105 employees in the existing bargaining unit . . . there is little concern that the accretion could create a QCR or otherwise disrupt Local 276's majority support within the unit." (*San Joaquin Regional Transit District, supra*, PERB Decision No. 2650-P, p. 18.)

Also in reference to the new argument the District raises in its judicial review request, we note that under federal law, because the TA classification performs functions that were historically performed by the Customer Information Clerk (CIC) classification in the same bargaining unit, the TA classification should properly be viewed as *remaining* within that unit, which is a further reason why there is no question concerning representation. (*Premcor, Inc.* (2001) 333 NLRB 1365 (*Premcor*) [noting exception allowing a newly-created position to be placed in a bargaining unit without satisfying accretion principles or requiring employee support, if the position's duties clearly fit within that unit].) The duties being compared need not be identical in every respect for the *Premcor* presumption to apply, particularly where the differences are due to technological advances or innovations in the work process. (*Premcor*, *supra*, at p. 1366.) Here, the introduction of the TA classification corresponded closely in time to the near-elimination of the CIC classification. With the volume of passenger phone calls

[11] In *Aubry*, *supra*, 42 Cal.App. 4th 861, new groups of employees were added to an existing bargaining unit without a showing of interest or majority support. (*Id*., p. 872.) At that time, DIR's regulations were in place, and they were identical to the regulations at issue here. (DIR Regulations were formerly codified at California Code of Regulations, title 8, section 15800 et seq.; see sections 15805(c) and 15815(c).) The District's construction of those regulations thus not only contravenes federal law, but, more importantly, contravenes *Aubry*, which holds that no showing of interest is required if the relative size of the accretion and other relevant factors warrant adding the employees at issue to the unit. (*Aubry*, *supra*, 42 Cal.App. 4th at p. 872.)

regarding bus routes, schedules, and other transit-related information decreasing due to increased use of the internet, the District reduced the number of CICs and introduced the TA classification to assist passengers in finding the correct bus and determining the best bus route. (*San Joaquin Regional Transit District, supra*, PERB Decision No. 2650-P, pp. 3-4, 16.) Despite some differences between the jobs, because the essential functions performed by the TA classification closely match those historically performed within the unit, the TA classification is properly viewed as remaining within the unit.

For the foregoing reasons, the instant case does not present a novel issue. As discussed *ante*, this case does not turn primarily on statutory construction. Rather, it turns on the Board's analysis of the record facts. (See e.g., *CAVA, supra,* PERB Order No. JR-27, p. 7.)

We also find no reason to believe that the issues presented are likely to arise frequently. It has been seven years since the Legislature transferred jurisdiction over SMCS appeals from DIR to PERB on July 1, 2012, and this is the first such case before us. While the reported decisions discussed *ante* show that such issues arose several times before July 1, 2012, these precedent suggest that they arose on a relatively infrequent basis.[12]

ORDER

The request for judicial review filed by San Joaquin Regional Transit District is hereby DENIED.

Member Paulson joined in this Decision.

Member Shiners' concurrence begins on p. 12.

[12] The issues the District raises are also not unique to its enabling act, leading us to question whether the District can satisfy the middle prong in our stringent judicial review standard—that the issues primarily involve construction of a statutory provision unique to the statute under consideration. Since the District has not met the other two prongs of our standard, we need not decide whether the District should be permitted to aggregate the 18 transit district enabling acts and treat them all as a single act for purpose of satisfying the middle prong.

SHINERS, Member, concurring: I concur in the denial of the San Joaquin Regional Transit District's (District) request for judicial review. I write separately because I find no basis in applicable statutes or regulations for the District to file—and thus for the Board to rule on the merits of—a request for judicial review in this matter.

The District cites two authorities for its request: Public Utilities Code section 99562 and PERB Regulation 32500. Public Utilities Code section 99562 is part of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). TEERA applies only to supervisory employees of the Los Angeles County Metropolitan Transportation Authority (Pub. Util. Code, § 99560.3), and thus does not apply to the District. The District's ability to request judicial review therefore rests on whether PERB Regulation 32500 applies here.

PERB Regulation 32500 provides, in relevant part:

> (a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, Chapter 7, or Chapter 8 of these Regulations, may file a request to seek judicial review within 20 days following the date of service of the decision.
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> [¶] . . . [¶]
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> Note: Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code; and Section 99562, Public Utilities Code.

"The first step in interpreting an administrative regulation is to 'give the regulatory language its plain, commonsense meaning.'" (*Grossmont Union High School District* (2018) PERB Order No. Ad-466, p. 3, quoting *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1145.) "If the language is ambiguous, we may look to other sources of interpretation,

'including the purpose of the regulation, the legislative history, public policy, and the regulatory scheme of which the regulation is a part.'" (*Grossmont Union High School District*, *supra*, PERB Order No. Ad-466, p. 3, quoting *Manriquez v. Gourley* (2003) 105 Cal.App.4th 1227, 1235.)

Representation matters arising in transit districts established under the Public Utilities Code (except for those employees covered by TEERA) are governed by Chapter 9 of PERB's regulations. (PERB Regs. 93000-93080.) Although decisions rendered under Chapters 5, 7, and 8 of our regulations are excluded from the scope of PERB Regulation 32500(a), the regulation does not exclude matters arising under Chapter 9. The majority thus concludes that Regulation 32500 "plausibly applies" in this case, but also notes the regulation's failure to exclude Chapter 9 may be "an oversight." Despite acknowledging this ambiguity, the majority conducts no further interpretive analysis and instead proceeds to analyze whether to grant judicial review. Unlike my colleagues, I would resolve Regulation 32500's ambiguity with respect to Chapter 9 against allowing a request for judicial review in this case.

Examination of interpretive sources beyond the plain language of PERB Regulation 32500(a) reveals no basis for interpreting the regulation to allow a request for judicial review of a Public Utilities Code transit district representation decision rendered under Chapter 9. Five of the statutes under PERB's jurisdiction—the Educational Employment Relations Act (EERA), the Higher Education Employer-Employee Relations Act (HEERA), the Ralph C. Dills Act (Dills Act), the Judicial Council Employer-Employee Relations Act (JCEERA), and TEERA—provide that unit determination decisions by the Board itself are not subject to judicial review "except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins

in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint." (EERA, Gov. Code § 3542, subd. (a); HEERA, Gov. Code § 3564, subd. (a); Dills Act, Gov. Code § 3520, subd. (a); JCEERA, Gov. Code § 3524.73, subd. (a); TEERA, Pub. Util. Code, § 99562, subd. (a).) In contrast, three other statutes under PERB's jurisdiction—the Meyers-Milias-Brown Act (MMBA), the Trial Court Employment Protection and Governance Act (Trial Court Act), and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act)—do not require filing a request for judicial review as a prerequisite to obtaining judicial review of a unit determination decision by the Board itself. (MMBA, Gov. Code § 3509.5, subd. (a); Trial Court Act, Gov. Code § 71639.4, subd. (a); Court Interpreter Act, Gov. Code § 71825.1, subd. (a).)

The purpose of PERB Regulation 32500(a) is to implement the above statutory provisions. Specifically, the regulation provides for a request for judicial review to be filed regarding Board unit determination decisions rendered under the regulations governing representation matters for EERA, HEERA, the Dills Act, and TEERA.[13] Conversely, under Regulation 32500(a) a request for judicial review may not be filed regarding a Board decision "rendered pursuant to Chapter 5 [governing representation matters under MMBA], Chapter 7 [governing representation matters under Trial Court Act], or Chapter 8 [governing representation matters under Court Interpreter Act] of [PERB] Regulations." Thus, a request for judicial review may be filed under PERB Regulation 32500(a) only when the applicable statute explicitly provides for such a request to be filed.

The "Reference" section of PERB Regulation 32500 also is instructive. Under the Administrative Procedure Act, "'[r]eference' means the statute, court decision, or other

[13] As of the date of this decision, proposed regulations governing representation matters under JCEERA are pending approval by the Office of Administrative Law.

provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation." (Gov. Code, § 11349, subd. (e).) The "Reference" section of Regulation 32500 lists the statutory provisions of EERA, HEERA, the Dills Act, and TEERA requiring a party to request judicial review of a unit determination decision by the Board itself, as well as those provisions of the MMBA, Trial Court Act, and Court Interpreter Act allowing judicial review without a request being made to the Board (which correspond to the exceptions listed in subdivision (a)). Thus, Regulation 32500 implements only the listed statutory provisions.

Turning to the District's enabling act, Public Utilities Code section 50121 grants the State Mediation and Conciliation Service (SMCS) authority to determine appropriate bargaining units in the District. A unit determination by SMCS may be appealed to the Board itself. (PERB Reg. 93025(d); *San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-460-M, pp. 4-5.) But neither section 50121 nor any of the other labor relations provisions of the enabling act requires the District or an employee organization to file a request for judicial review to obtain judicial review of a Board decision in such a case.[14] Furthermore, no provision of the District's enabling act is listed in the "Reference" section of PERB Regulation 32500. Because the District's enabling act does not require filing a request for judicial review with the Board itself as a prerequisite to judicial review of a unit determination decision and no provisions of the act are cited as a reference in Regulation 32500, the regulation cannot be read to allow a request for judicial review in this case, notwithstanding

[14] Notably, this aspect of the District's enabling act mirrors the MMBA, Trial Court Act, and Court Interpreter Act, which also do not authorize parties to file requests for judicial review. Accordingly, it is equally as "plausible" that PERB Regulation 32500 should be similarly interpreted as not requiring the District to file a request for judicial review. Unlike the majority, however, I refrain from rooting my conclusion in ambiguous possibilities but instead look to the entire context of the regulation.

the absence of an explicit exclusion for decisions rendered under Chapter 9 of PERB's regulations.

Further support for this reading is found in the legislative history of Chapter 9. As noted in our earlier decision in this case, "[p]rior to the transfer of SMCS to PERB in 2012, SMCS transit district unit determinations could be appealed to the Director of DIR [Department of Industrial Relations]. (*IBEW Local 889 v. Aubry* (1996) 42 Cal.App.4th 861, 867 (*Aubry*)." (*San Joaquin Regional Transit District* (2019) PERB Decision No. 2650-P, p. 6.) The Director's decision, in turn, was subject to judicial review via a petition for writ of mandate in superior court. (*Santa Clara Valley Transp. Auth. v. Rea* (2006) 140 Cal.App.4th 1303, 1311; *Aubry, supra*, 42 Cal.App.4th at p. 866.) Upon the transfer of SMCS to PERB, PERB, as required by the transfer legislation, adopted existing DIR regulations as Chapter 9 of PERB's regulations with no substantive changes. (Gov. Code, § 3603, subd. (c); *San Joaquin Regional Transit District, supra*, PERB Decision No. 2650-P, p. 6.) At the same time, all of the DIR Director's authority with respect to SMCS was transferred to the Board itself. (Gov. Code, § 3603, subd. (b).) The wholesale transfer of the existing review process without alteration indicates the Legislature did not intend to impose a different judicial review procedure for unit determination decisions rendered by the Board itself than existed when those determinations were made by the DIR Director.

"PERB has only such jurisdiction and powers as have been conferred on it by statute." (*Central Contra Costa Transit Authority* (2012) PERB Decision No. 2263-M, p. 6.) As a result, PERB cannot interpret a statute in a manner that "alters, amends or enlarges the scope of the power conferred upon" the agency. (Cal. Code Regs., tit. 1, § 14(c)(1)(A); *Samantha C. v. State Dept. of Developmental Svcs.* (2010) 185 Cal.App.4th 1462, 1481-1482.) Here, the

District's enabling act does not give the Board a gatekeeper role with respect to judicial review of its unit determination decisions. By reading PERB Regulation 32500(a) to allow a request for judicial review in this case, the majority arrogates to the Board a power not conferred on it by statute, i.e., the authority to decide whether to allow judicial review of the underlying decision. To avoid this untenable result, I read Regulation 32500(a) as not requiring or allowing the District to file a request for judicial review in this case, which is consistent with the regulation's purpose and legislative history. On this ground, I concur in the denial of the District's request.