

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on an interlocutory appeal filed by the Regents of the University of California (University) and joined by the PERB administrative law judge (ALJ) concerning the ALJ's Ruling on Order to Show Cause.

After a review of the entire record in this case, the Board finds the ALJ's ruling to be proper and affirms the Ruling on Order to Show Cause.

BACKGROUND

Three separate requests for recognition seeking to represent employees in various classifications at University of California, Davis, University of California, Santa Barbara and University of California, Los Angeles (UCLA) were filed with PERB by the Association of Graduate Student Employees, Student Association of Graduate Employees, and the Associated Student Employees (Petitioners). Each association is an affiliate of U.A.W., United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO. The Petitioners seek to represent at their respective campuses, among others, student employees in the following classifications: Teaching Associate, Teaching Assistant, Teaching Fellow (Graduate Student Instructors (GSI)), and Research Assistant (Graduate Student Researcher (GSR)).¹

¹A separate petition filed by the Association of Student Employees seeks to represent student employees in various job classifications at University of California, San Diego (UC San Diego). The classifications in question in the present case are not at issue in the UC San Diego petition (SF-R-805-H).

In 1989, the Board issued Regents of the University of California (AGSE) (1989) PERB Decision No. 730-H, in which it held that the GSI and GSR student employees at University of California, Berkeley (UC Berkeley) were not covered under the Higher Education Employer-Employee Relations Act (HEERA)² and, therefore, the University did not violate HEERA when it refused to bargain with the student employees in these classifications. In May 1992, the court affirmed the PERB decision in Association of Graduate Student Employees, District 65, UAW AFL-CIO v. PERB/Regents of the University of California (1992) 6 Cal.App.4th 1133 [8 Cal.Rptr.2d 275] rev. den. August 13, 1992 (AGSE). In light of the court's decision, on December 22, 1994, the ALJ ordered Petitioners to show cause why these classifications, previously deemed not covered under HEERA at the UC Berkeley campus, should not be dismissed from their representation petitions affecting other university campuses.

On March 13, 1995, the ALJ issued his Ruling on Order to Show Cause holding that the classifications in question should not be dismissed from the petitions at this stage of the proceedings. The ALJ concluded that evidence should be taken so that the unique circumstances of each campus, and any evidence of changed circumstances since 1985 when the AGSE case record was developed, can be evaluated.

Therefore, the ALJ's Ruling is not applicable to the UC San Diego petition.

²HEERA is codified at Government Code section 3560 et seq.

UNIVERSITY'S APPEAL

The University seeks the Board's reversal of the ALJ's ruling and a determination that the classifications in question are not covered under HEERA. The University contends that the AGSE decision, excluding GSIs and GSRs as employees under the HEERA at UC Berkeley, is applicable systemwide. The University also contends that the Petitioners have made no showing of changed circumstances that would justify relitigating this issue with regard to these job classifications.

The University requests that the Board act quickly to reverse the ALJ's ruling, or direct the ALJ to defer the next hearing until the winter of 1996. The University asserts that the delay is necessary due to the extensive preparation which is required in representation cases. Alternatively, the University requests that the Board stay the proceedings in the remaining three cases until the ALJ has issued his proposed decision concerning UC San Diego, and any appeals from that decision have been made and decided by the Board.

PETITIONERS' RESPONSE

The Petitioners argue that PERB precedent allows for reconsideration of prior PERB representation decisions if the parties can show changed circumstances. Petitioners claim that the evidence they seek to present will establish that conditions of employment for the employees in these classifications have changed. Petitioners also contend that the AGSE decision is limited to UC Berkeley and does not bind the parties in the

instant representation cases. Finally, the Petitioners oppose the University's request for a stay of the proceedings in these cases. Petitioners claim that a stay would have the effect of depriving many of the student employees of the opportunity for union representation during their employment with the University.

DISCUSSION

The question before the Board is whether it should reverse the ALJ and bar the Petitioners from putting on evidence of changed circumstances in the job duties of the student employee classifications in question.

The Board has held that parties have the right to relitigate representation matters by demonstrating a change in circumstances. (Regents of the University of California (1986) PERB Decision No. 586-H (Regents I); Regents of the University of California (Lawrence Livermore National Laboratory) (1993) PERB Decision No. 974-H; Regents of the University of California (1993) PERB Decision No. 993-H.) In Regents I, the Board held that previous unit determinations are binding only to the extent that circumstances and Board precedent remain the same. The Board stated:

Unit determinations are not intended to be fixed for all time and, where no representation is in place, it is appropriate to consider a claim that circumstances have changed. (p. 7.)

In response to the ALJ's Order to Show Cause, the Petitioners propose to present evidence to support their claim that circumstances have changed. Petitioners assert that in the

ten years since the AGSE record was developed, graduate student employees' career goals, interaction with professors, class size and the effect of technology on student-teacher interaction have changed. The Petitioners also note that in August 1989, the University recognized AGSE as the representative of employees at UC Berkeley in the following classifications: Teaching Assistant, Teaching Associate, Research Assistant and Teaching Fellow. Petitioners also propose to present evidence of collective bargaining between universities and graduate student employees at nine other universities in the United States and Canada.

Given PERB's clear precedent and policy that a claim of changed circumstances should be considered where no representation is in place, and since allowing such evidence would not preclude the ALJ, or the Board subsequently, from determining that HEERA does not cover the student employees in question, the Board finds that the ALJ correctly determined that the classifications at issue should not be dismissed at this stage of the proceedings.

Additionally, the University's request that the Board direct the ALJ to postpone further hearings to give it time to prepare its case, is denied. The ALJ issued his ruling in this matter on March 13, 1995. At that point, the parties were on notice that the issue of the student employees in question would be addressed in subsequent hearings, the first of which is now scheduled for October 1995 at UCLA. This amount of notice seems more than

adequate and, at this point, the need for any delay by any party in order to prepare its case can best be assessed by the ALJ.

The University also requests that the Board stay the proceedings in the three remaining representation cases, pending completion of any appeals in the UC San Diego case. HEERA section 3565 gives all employees the right to "form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring." In order to protect this right, delays in representation cases should be avoided. Since the classifications in question in this matter are not at issue in the UC San Diego case, it is unclear how awaiting a decision in that case would serve to clarify the issues raised here. Therefore, this request is also denied.

ORDER

The Board hereby AFFIRMS the ALJ's Ruling on Order to Show Cause in Case Nos. SF-R-806-H, SF-R-813-H and SF-R-815-H.

Members Carlyle and Johnson joined in this Decision.