

CLIENT NEWS BRIEF

Teachers' Union Prevails at PERB in Effort to Organize Charter Schools

The Public Employment Relations Board (PERB) recently held that a teachers' union's petitions for recognition at three charter schools were appropriate under the Education Employment Relations Act (EERA). Most importantly, PERB held that the union demonstrated sufficient majority support among employees of the schools to be certified as the exclusive representative of each school.

In this case, the United Teachers Los Angeles (UTLA) filed three separate petitions for recognition with PERB, seeking to represent teachers and counselors at three charter schools. Each of the three charter schools operated as a separate non-profit corporation and had an administrative services agreement with a non-profit charter management organization called Alliance College-Ready Public Schools (Alliance). Each school was a member of the network of 25 Alliance-affiliated charter schools. Alliance schools refused to recognize UTLA as the exclusive representative of the three schools, contending that the 25 school network constituted a single-employer and the appropriate bargaining unit must encompass all teachers and counselors within the entire 25 school network. Therefore, Alliance argued, the union could not organize on a school-by-school basis.

In determining whether a bargaining unit is appropriate, the EERA requires PERB to decide the question based on the community of interest, employer efficiency, and established practices. PERB found that there was sufficient community interest to support school-by-school units when considering the record of various Alliance cases as a whole. Alliance argued that a network-wide unit would be more efficient, but PERB pointed out that employer efficiency does not trump an employee's right to representation. Lastly, when analyzing Alliance's established practice, PERB pointed out that the practice in which UTLA relied was established in Alliance's prior declarations that each school was an independent employer, in the schools' individual charters, as well as prior PERB cases involving Alliance in which the schools strenuously asserted their autonomy. Thus, Alliance's established practice undermined their own argument that only a network-wide bargaining unit is appropriate.

PERB also considered the *Peralta* presumption, which states that all certificated employees of a "public school employer" should normally be included in a single bargaining unit. Here, all three schools filed declarations that they were a "public school employer" for purposes of the EERA, and PERB reasoned that, to the extent it applies, *Peralta* largely favors school-by-school units. The schools contended that PERB should disregard these declarations and rely on *California*

July 2020
Number 54



Edward J. Sklar
Partner
Walnut Creek Office
esklar@lozanosmith.com

Everett J. McLean
Law Clerk
Walnut Creek Office
emclean@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

July 2020
Number 54

Virtual Academies (2016) PERB Decision No. 2484 (CAVA). In CAVA, a union asserted that 11 charter schools satisfied the single employer test and, using *Peralta*, PERB supported granting the union's request to find a network-wide unit to be appropriate. Alliance asked PERB to extend *Peralta* and find that, where the single employer test is satisfied, a single unit of all employees of the single employer is the only appropriate bargaining unit. PERB found that to be a bridge too far and concluded that the schools' declarations and underlying charters, together with the record as a whole, were sufficient to establish each individual school as a "public school employer."

In prior unfair practices cases before PERB, Alliance had taken the exact opposite tact. Alliance schools successfully opposed UTLA's motions seeking to name every Alliance charter school as a respondent by denying the existence of any "single-employer" entity. The single employer doctrine says that PERB must consider: (1) functional integration of operations, (2) centralized control of labor relations, (3) common management; and (4) common ownership. The burden belongs to the schools to show, not only that they are part of a single-employer construct, but also that the only appropriate unit includes all certificated personnel within the purposed single-employer. PERB pointed out that the schools' evidence to meet their burden was directly contradicted by the evidence in their prior unfair practice cases. Specifically, PERB stated, "the Charter schools' evidence regarding the four-factor single-employer test established that they have spoken out of both sides of their mouths throughout the different proceedings." Consequently, PERB concluded that the schools' inconsistent arguments between PERB matters confirmed they could not meet their burden. It is important to note that in this particular case, PERB chose not to analyze the schools through the single-employer doctrine, but found for UTLA because Alliance schools benefited from prior PERB rulings based on the schools' past representations and UTLA, to their detriment, relied on those representations.

PERB considered the record of various Alliance cases as a whole and determined that school-by-school organizing was appropriate in this instance because each school legally declared itself to be a separate public school employer for the purposes of EERA. Further, PERB found that UTLA demonstrated majority support among the employees of each school, and certified UTLA as the exclusive representative of each school.

Takeaways

- When determining the appropriateness of network-wide or school-by-school union representation, PERB looks at the community of interest, employer efficiency, and established practices.
- Alliance's shifting and inconsistent arguments between PERB matters seemed to lead PERB to decide against Alliance in this matter.

If you have any questions regarding this decision or charter schools in general, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.