

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

In the Matter of:

UNIVERSITY OF LA VERNE,

Employer,

and

SERVICE EMPLOYEES
INTERNATIONAL UNION,

Petitioner.

Case No. 21-RC-115880

OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW

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I. Introduction¹

This Request for Review concerns a Decision and Direction of Election ("D&DE") issued by Regional Director Olivia Garcia at Region 21. The Employer, the University of La Verne ("Employer" or the "University"), is a private university whose main campus is located in La Verne, California, approximately 30 miles east of Los Angeles. Petitioner Service Employees International Union ("SEIU" or "Union") seeks to represent a single-facility unit of approximately 250 part-time adjunct faculty employed by the University.² The University offers undergraduate and graduate degree programs at its main campus, through online courses, and at nine regional campuses spread across seven counties in Central and Southern California.

¹ Citations to the hearing transcript will be formatted as follows: "TR [page]:[line]." Citations to Board exhibits will be formatted as "BX [exhibit number], [page number]." Citations to the Union's Exhibits will be identified as "UX" but will otherwise follow the same format. Employer's exhibits will be identified as "EX" and will follow the same format.

² Specifically, SEIU seeks to represent a bargaining unit described as follows:

Including:

All part-time faculty who are employed by University of La Verne to teach in the programs and academic units at the University's Main Campus who teach at least one credit earning class, lesson, or lab.

But excluding:

All other employees, specifically: all employees of the Bakersfield, Burbank, Irvine, Ontario, Oxnard, San Luis Obispo, and Victorville Regional Campuses; all employees of the Ontario Law School; all faculty teaching in locations outside of the University's Main Campus in La Verne, CA; all faculty teaching online courses (regardless of location); all full-time faculty; all graduate students; all lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants and research assistants; all full-time or part-time staff or administrators, whether or not they also have teaching responsibilities; all deans, registrars, and librarians; all volunteers; all other represented employees; all clerical employees, managers, supervisors, and guards as defined in the Act.

BX 1(a).

After a hearing on the matter and the submission of briefs by both parties, Regional Director Garcia issued a D&DE finding that "the University has failed to rebut the Board's longstanding presumption that the single-facility petitioned-for unit is an appropriate unit." D&DE at 2. Alternatively, the Regional Director found that under *Speciality Healthcare*, 357 NLRB No. 83 (2011), "the University has not demonstrated that the part-time faculty at the Main and Regional Campuses share an overwhelming community of interest." D&DE at 17 (internal quotations omitted).

In its Request for Review, the Employer argues that the only appropriate unit is a multi-facility unit comprised of part-time adjunct faculty at the Main Campus and the Regional Campuses, some of which are separated from the Main Campus by hundreds of miles. Yet the Employer fails to provide "compelling reasons" for the Board to grant review by showing either a departure from "a substantial question of law or policy" as established in Board precedent or "a substantial factual issue [that] is clearly erroneous on the record and . . . prejudicially affects the rights" of the Employer. NLRB Rules and Regulations Section 102.67(c).

Indeed, the University's attempts to find error in the D&DE miss the mark. The Employer's brief fails to address applicable Board precedent or how the Regional Director's application of the facts to the law constituted error. For example, although the Regional Director explicitly based her D&DE on a finding that the Employer failed to rebut the single-facility presumption [D&DE at 16-17], the Employer fails to address the single-facility presumption in its Request for Review or offer any argument that the University has indeed rebutted it.³ Nor

³It is not clear exactly which standard the Employer contends ought to govern the scope of the bargaining unit: "the standard by which the proposed unit is determined is not at issue. . . [t]he Region and the University acknowledge that the adjunct faculty members must share an

does the Employer address the Board's decision in *Specialty Healthcare*, extensively discussed by Petitioner and cited as an alternative rationale for the holding in the D&DE. See D&DE at 17. Instead, the Employer's brief completely sidesteps *Specialty Healthcare*, in favor of recapitulating arguments which were already considered and rejected by the Region in the Employer's post-hearing brief.

Although the Employer argues that "the University's adjunct faculty differ only with respect to where they work," the Employer has done little to undermine the clear record evidence showing important differences among adjunct faculty who teach at the Main Campus and those who teach at the Regional Campuses. More significantly, the Request for Review fails to identify a single factual finding made by the Regional Director that is "clearly erroneous" or "prejudicially affects the rights" of the Employer. For these reasons, there is no basis for the Board to grant the University's request for review of the D&DE.

II. The Regional Director's Findings of Fact

A. As the Regional Director Correctly Found, There Are Important Distinctions Between the Main and Regional Campuses.

The University's Main Campus, located in La Verne, California, is a traditional college campus, comprising several city blocks and complete with dormitories, a bookstore, and a cafeteria. BX 2, EX 1, p. 10-11. The University also operates nine Regional Campuses which

overwhelming community of interest, such that they are *effectively merged into a comprehensive unit*. At the University, adjunct faculty members are." This statement appears to commingle the standard set in *Specialty Healthcare* with the standard for overcoming the single-facility presumption. The Employer fails to establish, under either standard, that the Regional Director's application of Board precedent was clearly erroneous.

are located in the following cities throughout Central and Southern California: San Luis Obispo, Victorville, Ontario, Bakersfield, Irvine, Burbank, Oxnard, Point Mugu Naval Air Warfare Center, and Vandenberg Air Force Base. EX 1, 7. The nearest Regional Campus, located in Ontario, is approximately 12.5 miles from the Main Campus. UX 1. The farthest regional campus, San Luis Obispo, is approximately 227 miles from the Main Campus. UX 1. Some of the Regional Campuses are located in suites in office buildings. TR 25:18-21;147:4-17. The Point Mugu and Vandenberg campuses are located on military bases in former school sites.⁴ TR 28:2-10.

The University is divided into four colleges: the College of Arts and Sciences, the College of Business and Public Management, the College of Education and Organizational Leadership, and the College of Law. EX 1, p.6; TR 93:15-20. A dean oversees the affairs of each college and reports to the university provost. TR 55:7-12. A fifth dean, the Dean of Regional and Online Campuses ("ROC"), is responsible for the management and supervision of the nine regional campuses and the online program, La Verne Online. UX 2; TR 124:24-125:5. According to a job description, the ROC Dean also "provide[s] leadership, support, and supervision for regional campus and online department professional and classified staff *as well as adjunct faculty*." UX 2, p. 2 (emphasis added). The ROC Dean is also "[r]esponsible for the hiring, performance evaluation, and management of program staff and *instructional staff* related to regional campus and online programs." UX 2, p. 2 (emphasis added).

⁴Access to the Point Mugu campus is limited to those with military base credentials. TR 28:11-19.

The University hires part-time faculty on a course by course basis. *See generally* EX 5. Once an applicant is approved to teach at ULV, he or she is placed into a pool of available instructors. TR 104:20-22. In order to be placed in the pool, candidates first submit application materials which are evaluated by the academic department in which the candidate would like to teach. TR 48:5-16. Candidates are also interviewed. TR 73:3-4. At the Main Campus, interviews are conducted by an Associate Dean of the appropriate college. TR 78:9-17. If the academic department approves the candidate to teach a course, he or she is placed in the pool. TR 48:17-24. The University then hires a part-time adjunct to teach a particular class by selecting him or her from the pool. TR 104:20-22.

At the Regional Campuses, the selection and appointment of adjunct faculty is controlled locally. The ROC Dean is responsible for the hiring of instructional staff at the Regional Campuses. UX 2, p. 2. This responsibility is delegated to the Regional Director, a local administrator whose duties include recruitment and hiring of part-time adjunct faculty and selection of part-time adjunct professors to teach courses at Regional Campuses. TR 47:24-48:1; 47:13-23. The Regional Director collects application materials and screens candidates to determine whether they meet minimum qualifications for hire. TR 54:4-8; 77:9-22. Regional Directors interview candidates. TR 72:25-73:20;78:9-24. The Regional Directors select faculty from the pool to teach courses at the Regional Campuses. TR 82:2-13; 88:6-23; 104:9-11; 106:21-107:5.

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B. As the Regional Director Correctly Found, the Record Does Not Reflect Significant Employee Contact or Interchange.

As the Regional Director correctly concluded, the record does not provide significant evidence of employee contact or interchange. The nine Regional Campuses are located between 12.5 and 227 miles from the Main Campus. *See generally* UX 1. The University periodically offers staff training and development on the Main Campus. Although staff from the Regional Campuses are invited to attend these meetings, it is unclear to what extent faculty from the Regional Campuses actually attend. TR 134:19-136:8. The University also offers separate training courses for adjunct faculty at the Regional Campuses. TR 135:16-136:1.

As proof of interchange, the University offered into evidence a spreadsheet created by witness Dr. Abe Helou, Dean of the College of Business and Public Management. *See* EX 6. The exhibit reflects part-time adjunct faculty assignments in the College of Business and Public Management for the Winter 2014 and Spring 2014 terms, which at the time of the hearing had not yet occurred. TR 170:16-19. According to Dr. Helou, the spreadsheet purports to establish that 32% of part-time adjuncts in the College of Business and Public Management teach at both the Main Campus and the Regional Campuses. *See* EX 6.; TR 172:8-10.

III. Standard of Review

NLRB Rules and Regulations Section 102.67(c) states that "the Board will grant a request for review *only where compelling reasons exist therefor . . .*" and only upon one or more of the following grounds:

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- (1) That a substantial question of law or policy is raised because of (I) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a *substantial factual issue* is clearly erroneous on the record and such error prejudicially affects the rights of a party.

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NLRB Rules and Regulations Section 102.67(c) (emphasis added).

IV. The Employer Presents No Compelling Reasons for Review.

A. Well-Settled Board Precedent Supports the Regional Director's Decision.

The Regional Director's D&DE found that the petitioned-for unit is appropriate for bargaining based on well-settled Board precedent applying the single-facility presumption. D&DE at 10-11. In determining the appropriateness of a petitioned-for unit at a college or university, the Board applies the rules traditionally used to determine the appropriateness of a unit in an industrial setting. *Livingstone College*, 290 NLRB 304, 305 (1988). A single campus unit, like a single facility unit, is viewed by the Board as presumptively appropriate under the Act. *Id*; see also *Hilander Foods*, 348 NLRB 1200 (2006). The party arguing in favor of a multi-facility unit bears the burden of overcoming this presumption. *Prince Telecom*, 347 NLRB 789, 792 (2006). The single-facility presumption applies unless the single facility "has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity." *Hilander Foods*, 348 NLRB 1200, 1200 (2006). To determine whether the single-facility presumption has been overcome, the Board examines the following factors: 1) centralized control over daily operations and labor relations, including the extent of local autonomy; 2) similarity of skills, functions, and working conditions; 3) degree of employee

interchange; 4) distance between locations; and 5) bargaining history, if any. *New Britain Trans. Co.*, 330 NLRB 397 (1999).

Here, the Regional Director correctly concluded that because the petitioned-for unit is all part-time adjunct faculty at a single facility – the University's Main Campus – it is therefore presumptively appropriate. D&DE at 2-3. She then examined the traditional community of interest factors set forth in *New Britain Trans. Co.* to determine whether the Employer presented sufficient evidence to rebut the presumption. D&DE at 10-16. Analyzing the community of interest factors, the Regional Director correctly concluded that the Employer failed to rebut the single facility presumption. There is no question that Regional Director Garcia properly applied longstanding Board precedent to the facts in the record.

Alternatively, the Regional Director stated that even under the framework set forth in *Specialty Healthcare*, 357 NLRB No. 83 (2011), "the University has not demonstrated that part-time faculty at the Main and Regional Campuses share an overwhelming community of interest" (internal quotations omitted). D&DE 17. In *Specialty Healthcare*, the Board held that where a party contends that a petitioned for unit is inappropriate because it does not contain additional employees, the burden is on the party contending that a petitioned-for unit is inappropriate to demonstrate that excluded employees share an "overwhelming community of interest" with the included employees. *Id.*, slip op at 1. There is an overwhelming community of interest only when there is "*no legitimate basis*" upon which to exclude certain employees from the larger unit because the traditional community-of-interest factors "*overlap almost completely.*" *Id.*, slip op. at 16 (emphasis added) (*quoting Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008)). Although the Board has not specifically extended its holding in *Specialty Healthcare* to

the higher education setting, the Board has applied the *Specialty Healthcare* framework to job classifications and industries outside of healthcare. *See, e.g., Odwalla, Inc.*, 357 NLRB No. 132 (2011) (sales drivers and merchandisers in a beverage company); *DTG Operations, Inc.*, 357 NLRB No. 175 (2011) (rental service agents at a rental car company); *Northrup Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (2011) (technicians at a shipbuilding company). Thus, applying either the single-facility presumption or the framework adopted by *Specialty Healthcare*, the Regional Director's decision is supported by Board precedent.

B. The Record Supports the Regional Director's Findings of Fact.

The record supports the Regional Director's findings of fact. Even where the Employer takes issue with the Regional Director's factual findings, none of these findings is clearly erroneous or rises to the level of a *substantial factual issue* that merits the Request for Review.

1. *Regional Campuses Exercise Significant Local Autonomy.*

Consistent with Board precedent, Regional Director Garcia considered the extent of local autonomy as a factor in rebutting the single-facility presumption. *See generally AVI Foodsystems, Inc.*, 328 NLRB 426 (1999) (finding local autonomy based on separate immediate supervision and separate day-to-day control over operations). Contrary to the Employer's assertion that the University maintains centralized control over all adjuncts, the Regional Director properly found that "the Regional Campuses have significant daily autonomy and separate supervision from the Main Campus to warrant a finding that the stipulated petitioned-for unit is appropriate under the single-facility presumption." D&DE at 12. The record supports this finding. Specifically, the Regional Director found that the Regional Campuses are overseen by a

separate dean, the ROC dean, who oversees the administrative processes for the Regional Campuses. UX 2; TR 124:24-125:5. The Employer does not dispute this fact.

Importantly, the Regional Director noted that the hiring process for applicants at the Regional Campuses differs from the process for applicants to the Main Campus. D&DE at 13. The Employer disputes this finding: "[s]he [Regional Director Garcia] claims that the hiring process differs amongst the campuses. *That is not true.* No adjunct faculty member may work anywhere at the University without one or more College Dean's approval." Request for Review at 5 (emphasis added). Yet Regional Director Garcia acknowledges this fact in the D&DE: "Department Chairs and College Deans located at the Main Campus exert specific control over all part-time faculty *by pre-approving their applications to become part-time faculty. . . .*" See D&DE at 12. Although it may be true that all hiring decisions must be approved by an academic dean, the Employer sidesteps the record evidence that supports the Regional Director's conclusion: University Regional Directors screen each applicant to determine if he or she meets the University's hiring criteria [TR 77:9-22]; interview candidates [TR 72:25-73:20; 78:9-24]; and, most significantly, make the ultimate determination of which of the pre-approved part-time adjuncts teach at their Regional Campus. TR 82:2-13; 88:6-23; 104:9-11; 106:21-107:5. See *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988) (finding sufficient local autonomy where local terminal manager conducted initial screening for new hires and was consulted on major disciplinary issues).

The record provides further evidence of local autonomy by the Regional Campuses. Regional Directors evaluate and monitor part-time adjunct faculty teaching performance. TR 98:2-8. Regional Directors also accept and attempt to resolve faculty grievances [TR 154:4-12]

and student complaints [TR 97:2-8]. When considered as a whole, the Regional Director properly concluded that the evidence supported a finding that the Regional Campuses exerted significant local autonomy. D&DE at 12.

2. *The Geographic Separation Between the Main and Regional Campuses is Significant.*

The Employer argues that the geographic separation between campuses, and the fact that some adjuncts teach in classrooms located in office suites or military bases as opposed to the traditional college setting of the Main Campus, is a distinction "wholly without difference because the faculty's working conditions are the same regardless of their geographic location." Request for Review at 7.

Yet the Employer does not dispute the Regional Director's finding that the distance between the Main Campus and the Regional Campuses range from 12.5 to over 200 miles. D&DE at 16. Nor does the Employer dispute Regional Director Garcia's conclusion that the significant geographic separation supports a finding in favor of the petitioned-for unit. D&DE at 16. Indeed, the Board has found in favor of single-facility units where the geographic distance between facilities is far less. *See, e.g., Catholic Healthcare West*, 344 NLRB No. 93 (2005) (facilities were 12 to 20 miles apart); *New Britain Trans. Co.*, 330 NLRB No. 397 (1999) (facilities were 6 to 12 miles apart); *O'Brien Memorial, Inc.*, 308 NLRB No. 79 (1992) (facilities were located within a 20 mile radius).

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3. *The Employer Failed to Produce Evidence of Substantial Employee Contact or Interchange.*

During the hearing, the Employer failed to provide any competent evidence of regular or substantial interchange or contact among employees. The Employer presented a spreadsheet prepared by Dr. Abe Helou, Dean of the College of Business and Public Management, that purports to establish that 32% of part-time adjuncts in the College of Business and Public Management teach at both the Main Campus and the Regional Campuses. *See* EX 6. As the Regional Director correctly concluded, the exhibit is significantly flawed and not a reliable source of data about the frequency of interchange among employees. D&DE at 15-16. The exhibit reflects part-time adjunct faculty assignments for the Winter 2014 and Spring 2014 terms, which have not yet occurred. TR 170:16-19. Moreover, it only captures interchange information for one college, the College of Business and Public Management. For these reasons, the Region properly accorded this exhibit little weight. D&DE at 16.

In examining contact among employees, the Regional Director noted that the Regional Campuses are separated from the Main Campus by hundreds of miles in some cases. D&DE at 15. Although the Regional Director noted that Regional Campus employees are *invited* to events on the Main Campus [TR 135:6-11], she correctly concluded that the Employer failed to present any evidence of actual contact or interaction between Regional Campus faculty and those faculty who teach at the Main Campus. D&DE at 15.

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4. *The Remaining Commonalities Cited By the Employer Are Not Sufficient to Overcome the Single-Facility Presumption.*

The Employer's Request for Review asserts that the Regional Director "ignored" or "disregarded" various facts. Importantly, the Employer does not argue that the Regional Director made an erroneous determination of these facts. Instead, the Employer appears to argue, without citing a single case, that the Regional Director erred by failing to give proper weight to similarities such as uniform wages [Req. for Rev. at 8], uniform employment policies [Req. for Rev. at 9], uniform performance evaluation processes [Req for Rev at 9], and uniform disciplinary procedures [Req. for Rev. at 11]. These arguments are without merit. Board precedent does not require that every community of interest factor receive equal treatment or equal weight. As noted by the Regional Director, the Board considers certain factors, like the degree of employee interchange and separate supervision, to be of particular importance in determining whether the single-facility presumption has been overcome. *See D&DE at 11 (citing Passavant Retirement and Health Center, Inc., 313 NLRB 1216, 1218 (1994)).* In light of the special weight that the Board places on certain community of interest factors, the facts cited by the Employer are insufficient to overcome the single-facility presumption.

V. Conclusion

Because the Employer has not provided any compelling reasons to review the D&DE, has not identified a substantial departure from Board precedent, and failed to indicate any erroneous factual findings, there are no grounds for the Board to review the Regional Director's Decision

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and Direction of Election. Accordingly, Petitioner respectfully requests that the Board deny the Employer's request for review.

Dated: January 28, 2014

JONATHAN COHEN
MARIA KEEGAN MYERS
ROTHNER SEGALL & GREENSTONE

By 
MARIA KEEGAN MYERS

Attorneys for Service Employees International
Union

Re: University of La Verne
Case No. 21-RC-115880

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 510 South Marengo Avenue, Pasadena, California 91101.

On January 28, 2014, I served the foregoing document described as **OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jon C. McNutt
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(By Mail)

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice I place all envelopes to be mailed in a location in my office specifically designated for mail. The mail then would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit. Executed on January 28, 2014.

(By Electronic Transmission (E-Mail))

Based on a Court order or on an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) described above to be sent from e-mail address dmartinez@rsglabor.com to the persons at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 28, 2014.



DOROTHY A. MARTINEZ