

## **Proof of Majority Support Not Always Required When Adding Employees to a Bargaining Unit**

### **County of Riverside (2011) PERB Decision No. 2163M (Issued on 2/18/11)**

This case began with a petition from SEIU to add unrepresented 'per diem' nurses to an existing bargaining unit. The County denied the petition because it was not accompanied by proof of majority support of the per diem nurses being added to the unit. SEIU filed an unfair practice charge asserting that it was unreasonable for the County to impose a majority support requirement on SEIU's petition because the County's local rules did not contain such a requirement. In defending against the unfair practice charge, the County acknowledged that its local rules were silent regarding proof of support but argued that a majority support requirement had to be implied in the rules in order to prevent unrepresented employees from being "involuntarily unionized against their will." The Administrative Law Judge (ALJ) rejected the County's defense. The ALJ held that the County's position was contrary to PERB regulations which only require proof of majority support if the added employees would increase the existing bargaining unit by 10% or more.

On exceptions, the Board affirmed the ALJ's proposed decision. The Board noted that the National Labor Relations Board (NLRB) only requires a showing a majority support when the employees to be added to an existing bargaining unit historically have been excluded from the unit, typically (but not necessarily) by agreement between the union and the employer. (*Teamsters National United Parcel Service Negotiating Committee v. National Labor Relations Bd.* (D.C. Cir. 1994) 17 F.3d 1518, 1522; *Laconia Shoe Co.* (1974) 215 NLRB 573, 576.) However, PERB does not follow the NLRB's approach to accretion. Instead, PERB regulations require a showing of majority support when adding the requested employees "would increase the size of the established unit by ten percent or more." (PERB Regs. 32781(e)(1); 61450(e)(1); 81450(e)(1); 91450(e)(1).) If the addition would not increase unit size by ten percent or more, no showing of majority support is required. (*Regents of the University of California* (2010) PERB Decision No. 2107-H.) Based on PERB's regulation on accretion, the Board rejected the County's argument that a showing of majority support must be implied whenever employees are added to an existing bargaining unit.