

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT -RELATIONS BOARD



In the Matter of:)

UNIT DETERMINATION FOR SERVICE EMPLOYEES)
OF THE UNIVERSITY OF CALIFORNIA)
PURSUANT TO CHAPTER 744 OF THE)
STATUTES OF 1978 (HIGHER EDUCATION)
EMPLOYER-EMPLOYEE RELATIONS ACT))

) Case Nos. SF-RR-1002, et al.

) PERB Decision No. 245-H

) September 30, 1982

Appearances: Robert J. Bezemek, Attorney (VanBourg, Allen, Weinberg & Roger) for United Health Care Employees, SEIU; Hirsch Adell and Glenn Rothner, Attorneys (Reich, Adell & Crost) and Les Chisholm for American Federation of State, County and Municipal Employees, AFL-CIO; Christine A. Bologna, Attorney, Wayne Heine and Gerald B. Radeleff for California State Employees Association; Patrick J. Szymanski, Attorney (Beeson, Tayer, Kovach & Silbert) for Brotherhood of Teamster and Auto Truck Drivers, Local No. 70; Jerrold C. Schaefer and Judith Droz Keyes, Attorneys (Corbett, Kane & Berk) for the Regents of the University of California.

Before: Tovar, Jaeger, Morgenstern and Jensen, Members*

I.

INTRODUCTION

The Higher Education Employer-Employee Relations Act (HEERA or Act)¹ became effective July 1, 1979 as a result of legislation enacted by the California Legislature in 1978. The legislation granted jurisdiction over the HEERA to the Public

* Chairperson Gluck did not participate in this decision.

¹The HEERA is codified at Government Code section 3560 et seq. All statutory references hereafter are to the Government Code unless otherwise indicated.

Employment Relations Board (hereafter PERB or Board). Its terms extend the opportunity for collective negotiations to, among others, employees of the University of California and their designated representatives.² As an initial step in the representational process, PERB has authority to determine the appropriate units for employees of the University.³

Pursuant to rules and regulations adopted by the Board,⁴ various employee organizations filed petitions with the Board describing the units they believed to be appropriate. Parties to the instant case then participated in the unit determination hearing conducted by a PERB hearing officer who thereafter transmitted the entire record along with his unit recommendations to the Board itself for decision.

In two decisions of this Board issued today (Unit Determination for Technical Employees of the University of California (9/30/82), PERB Decision No. 241-H, and Unit Determination for Clerical Employees of the University of

²In addition to providing exclusive representation of employees in appropriate units by employee organizations, HEERA also makes it unlawful for the employer or the employee organization to commit certain acts and requires the employer and the exclusive representative to meet and confer in good faith and endeavor to reach an agreement on matters within the scope of representation.

³Subsection 3563(a).

⁴PERB rules and regulations regarding HEERA are codified at California Administrative Code, title 8, section 50000 et seq.

California (9/30/82), PERB Decision No. 244-H), the Board determined that three units of technical employees and one unit of clerical employees were appropriate. Based on the evidence and the briefs submitted by the parties, as well as the hearing officer's recommendations, and pursuant to the statutory unit determination criteria,⁵ the Board has determined that the following additional units are appropriate:

Systemwide Service Unit (excluding employees of Lawrence Livermore National Laboratory);

Lawrence Livermore National Laboratory Service Unit.

THE SERVICE PETITIONS

Positions of the Parties

The American Federation of State, County and Municipal Employees (AFSCME) and the California State Employees Association (CSEA) have each petitioned for a systemwide unit of service employees, including employees of all nine campuses and the Lawrence Berkeley Laboratory, but excluding employees of the Lawrence Livermore National Laboratory (LLNL). The University supports their position. In opposition to these petitions are the petitions of United Health Care Employees, SEIU, Locals 102, 250 and 434 (SEIU), AFSCME Local 371, and

⁵See this Board's preceding decision, Unit Determination for Technical Employees of the University of California (9/30/82) PERB Decision No. 241-H, pp. 3-6, for a review of the statutory unit determination criteria. That discussion is incorporated herein by reference.

Brotherhood of Teamsters and Auto Truck Drivers Local 70 (Teamsters Local 70). SEIU's petition is for a unit composed of the service personnel employed at the University's medical facilities. AFSCME Local 371 petitions for a unit of custodial employees at the University of California, Berkeley (UCB). Teamsters Local 70 has filed two petitions: one for a unit of truck drivers at UCB, University of California, San Francisco, Lawrence Berkeley Laboratory and systemwide administration; the other for a unit of laborers and gardeners at UCB⁶. Finally, Laborers International Union Local 1276 has petitioned for a unit of protective services officers at LLNL and has joined with the Alameda County Building and Construction Trades Council to petition for a unit of service and skilled crafts employees at LLNL.

For the reasons set forth below, we find the proposal of AFSCME and CSEA for a systemwide service unit to be more appropriate than the competing petitions. We also find that the service employees of LLNL petitioned for by Laborers Local 1276 constitute an appropriate unit.

DISCUSSION

The hallmark of service employees is their performance of routine manual labor: "[t]he primary work functions of these

⁶In the alternative, Teamsters Local 70 argues that the truck drivers, laborers and gardeners should be included in individual campus service units or in a Bay Area service unit.

employees involve providing a proper physical environment and support services for students."7 Thus, the petitions of AFSCME and CSEA include such classifications as sports assistants, reprographic technicians, mail processors, ushers, storekeepers, custodians, parking attendants, cooks, food service workers, laundry machine operators, gardeners, automotive mechanics, laborers, truck drivers, laboratory assistants and odd jobbers. Included in the unit petitioned for by AFSCME and CSEA are classifications which could be considered "security" positions, such as security guards and protective service officers. These employees do not have peace officer status, and may thus be included in the unit notwithstanding subsection 3579(f), which directs that peace officers may not be included in any unit which contains employees other than peace officers.⁸ No party opposes this inclusion nor does any party seek a separate systemwide security unit.

⁷Sweetwater Union High School District (11/23/76), PERB Decision No. 4, at page 9.

⁸Subsection 3579(f) provides as follows:

(f) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (d) and (e) of Section 830.2 of the Penal Code.

Service employees are distinguished from clerical employees by the lack of an office environment, and from technical and skilled craft employees by their lack of specialized education and training.

Thus, while their duties vary, service employees share a strong, functionally-related community of interest in that they perform physical laboring tasks to maintain the campus' physical environment and for which the required levels of skill and training do not greatly differ. As a consequence, working conditions also are similar, as well as benefits under the University's staff personnel policies. For purposes of representation on terms and conditions of employment, therefore, the interests of the University's service employees are substantially similar systemwide. In light of this community of interest, together with the University's concurrence in the appropriateness of a systemwide unit, we find that an effective meet and confer relationship is presented by the AFSCME/CSEA proposal. On this basis we determine that the AFSCME/CSEA proposal for a systemwide service unit (excluding LLNL) is appropriate. The class composition of this unit is attached hereto as Appendix A. The Petitions of SEIU, AFSCME Local 371 and Teamsters Local 70

The bulk of the University's service employees are in classifications which exist on every campus. Conversely, few classifications are unique to any single campus.

Significantly, the petitions for units of service employees filed by SEIU, AFSCME Local 371 and Teamsters Local 70 consist almost entirely of classifications which are systemwide. Thus, these petitions run afoul of the presumption in section 3579(c) that all employees in an occupational group be in the same representation unit. To rebut the presumption, section 3579(c) requires that the petitioner show not only that its proposed unit is appropriate under section 3579(a) criteria, but to show as well that including these employees in a systemwide service unit is inappropriate.

This none of the petitioners have done. There is no evidence in the record that the work performed by employees petitioned for by SEIU, AFSCME Local 371 and Teamsters Local 70 is not functionally the same as that performed by other employees in the same classifications. Nor is there evidence that those petitioned-for employees are not subject to the same systemwide personnel policies, wage structure and other working conditions as other employees in their classifications. Finally, while there is some evidence of a past history of separate representation for some of these employees, the evidence does not persuade us that the disruption of these existing representational relationships would be so damaging as to be found inappropriate.

Since none of the parties have shown that it would be inconsistent with HEERA unit determination criteria to include

all University service employees (excluding those at LLNL) in a single unit, the section 3579(c) presumption has not been rebutted. Thus, the petitions for units of service employees filed by SEIU, AFSCME Local 371 and Teamsters Local 70 are rejected.

Petitions of Laborers Local 1276

Laborers International Union Local 1276 (Laborers) has filed a petition, together with the Alameda County Building and Construction Trades Council (Trades Council), to represent a unit of service and skilled craft employees of LLNL. It has filed another petition to represent a unit of protective services officers at LLNL.

In Unit Determination for Skilled Craft Employees of the University of California (9/30/82), PERB Decision No. 242-H, the Board found appropriate a unit of skilled craft employees of LLNL. That unit includes certain employment classes which are listed in the above-noted Laborers/Trades Council petition and which were found to be skilled crafts classes. Considering the remaining classes in the Laborers/Trades Council petition, we find that the employees in these classes share a substantial community of interest. The proposed unit would include nearly all the non-craft blue collar employees at LLNL, consisting of custodians, gardeners, laborers, vehicle drivers and mechanics, materials handlers and miscellaneous laboring specialists. Thus, they are all unskilled or semi-skilled workers who, as

such, share a substantial community of interest. Because they share a common level of skills, they are likely to command similar rates of compensation. So, too, they generally work similar hours, and the physical nature of their work produces similar working conditions and concerns. Thus the meet and confer relationship between a single representative of these employees and the University would be an effective and efficient one.

The Laborers have also petitioned to represent the protective services officers (PSOs) of LLNL. The proposed unit would consist of just two classes: 950.0 protective services officer and 950.3 protective services officer-sergeant. Although the Laborers petitioned for PSOs as a separate unit, we find that a separate representational unit for these employees would be inappropriate, and that the two petitioned-for classes should appropriately be included in the LLNL service unit which the Laborers, with the Trades Council, separately petitioned for.

Although they carry guns, PSOs do not have peace officer status. Because the Lab is closed to the public, their duties are different from those of the University peace officers who patrol the nine open campuses. PSO duties include checking clearance badges at entry points, escorting uncleared persons through the lab and securing classified information from their view, performing foot and motor patrol, traffic control

functions and classified document destruction. PSOs escort movement of hazardous or toxic materials through the laboratory and, in the event of a "spill," they set up traffic barriers and control the movement of personnel in the area. Unlike most laboratory personnel, the PSOs' schedule covers seven days a week, 24 hours a day.

Under EERA, in Sacramento City Unified School District (9/20/77) PERB Decision No. 30, the PERB followed private sector precedent and established a separate unit of security guards, stating:

The employer is entitled to a nucleus of protection employees to enforce its rules and to protect its property and persons without being confronted with a division of loyalty inherent in the inclusion of security officers in the same unit with other classified employees. (Emphasis added.)

The policy of providing a separate unit is for the employer's benefit. Since in this case, the University opposes a separate security unit, there is no reason to apply that policy here. Instead, the unit determination for these employees must be based on the criteria set forth at section 3579(a) of HEERA.

On the basis of the section 3579(a) criteria and the record evidence, there is little to support the separate uniting of PSOs. Like the other service employees which the Laborers petitioned for jointly with the Trades Council, the PSOs are

relatively unskilled employees, performing for the most part routine physical tasks. Thus they are likely to command similar rates of compensation. Their interest in matters relating to hours is in common with custodians and other service classes which are on duty on shifts other than the day shift. So, too, because of the routine physical nature of their work they generally share a common interest in working conditions with the other service employees. Thus the meet and confer relationship between the University and a single representative of the service employees would not be complicated by the inclusion of the PSOs. Little would be gained in subdividing the unskilled and semi-skilled classes which would offset the negative effects of fragmentation and proliferation of units. Therefore, in view of the Laborers' petitions to represent the service employees of LLNL, we approve as an appropriate unit a single unit of LLNL service employees which includes the service classes petitioned for by the Laborers in both their petitions.

ORDER

Based on the entire record in this case, the Public Employment Relations Board hereby ORDERS that:

1. A unit composed of all service employees of the University of California, but excluding those employed at the Lawrence Livermore National Laboratory, is appropriate for the purpose of meeting and conferring in good faith pursuant to

Government Code section 3560, et seq. The employment classes included in this unit are set forth in the attached Appendix A.

2. A unit composed of all service employees at the Lawrence Livermore National Laboratory is appropriate for the purpose of meeting and conferring in good faith pursuant to Government Code section 3560 et seq. The employment classes included in this unit are set forth in the attached Appendix B.

3. Each of the units found appropriate shall exclude managerial, supervisory and confidential employees of the University.

4. Any technical errors in this ORDER shall be presented to the director of representation who shall take appropriate action thereon in accordance with this decision.

5. The Board hereby ORDERS a representation election in each of these units and the general counsel is hereby directed to proceed in accordance with California Administrative Code, title 8, part 3, division 4.

By the BOARD

APPENDIX A

SERVICE UNIT

4021	Sports Assistant
4022	Referee/Umpire
4041	Sports Event Attendant
4821	Mail Service Supervisor
4822	Senior Mail Processor
4823	Mail Processor
4824	Assistant Mail Processor
5062	Senior Storekeeper
5063	Stores Worker
5064	Storekeeper
5065	Assistant Storekeeper
5066	Delivery Worker
5101	Senior Custodian Leader
5102	Custodian Leader
5103	Custodian
5112	Custodian Supervisor
5113	Assistant Custodian Supervisor
5114	Window Cleaner
5116	Senior Custodian
5117	Custodian
5123	Elevator Operator
5160	Window Washer

5166 Senior Light Fixture Attendant
5167 Light Fixture Attendant
5207 Rescue Worker
5208 Assistant Rescue Worker
5326 Senior Security Guard
5327 Security Guard
5328 Proctor
5332 Parking Supervisor
5333 Senior Parking Representative
5334 Parking Representative
5335 Parking Assistant
5445 Assistant Food Service Manager
5450 Principal Food Service Supervisor
5451 Senior Food Service Supervisor
5452 Food Service Supervisor
5501 Principal Baker
5502 Senior Baker
5503 Baker
5505 Assistant Baker
5517 Meat Cutter
5521 Principal Cook
5522 Senior Cook
5523 Cook
5524 Assistant Cook
5538 Cook-Housekeeper

5650 Principal Food Service Worker
5651 Senior Food Service Worker
5652 Food Service Worker
5821 Senior Head Linen Service Worker
5822 Head Linen Service Worker
5832 Senior Linen Service Worker
5833 Linen Service Worker
5835 Laundry Rotary Press Operator
5841 Senior Laundry Machine Operator
5842 Laundry Machine Operator
5863 Power Sewing Machine Operator
5864 Drapery Maker
6272 Head Usher
6273 Senior Usher
6274 Usher
6282 House Manager II
6283 House Manager I
6284 Assistant House Manager
6772 Senior Library Bookmender
6773 Library Bookmender
6774 Library Bookmender Trainee
8074 Laborer Supervisor
8075 Lead Laborer
8076 Laborer
8082 Tree Trimmer Supervisor

8083 Tree Trimmer
8085 Pest Control Supervisor
8086 Pest Control Operator
8095 Physical Plant Laborer/Gardener Supervisor
8096 Lead Physical Plant Laborer/Gardener (B)
8097 Physical Plant Laborer/Gardener (B)
8098 Physical Plant Laborer/Gardener (A)
8131 Grounds Supervisor
8132 Lead Groundskeeper
8133 Groundskeeper
8134 Grounds Equipment Operator
8148 Senior Farm Maintenance Worker
8149 Farm Maintenance Worker
8211 Building Maintenance Supervisor (except UCLA)
8212 Senior Building Maintenance Worker (except UCLA)
8213 Building Maintenance Worker (except UCLA)
8247 Physical Plant Operator Supervisor
8248 Physical Plant Operator
8371 Port Steward
8372 Senior Marine Cook
8373 Marine Cook
8453 Airport Services Worker
8454 Airport Services Helper
8475 Automotive Attendant
8483 Driver

8485 Principal Automotive Equipment Operator
8486 Senior Automotive Equipment Operator
8487 Automotive Equipment Operator
8524 Assistant Farm Machinery Mechanic
8525 Farm Machinery Attendant
8535 Laundry Truck Driver
8540 Principal Agricultural Technician
8541 Senior Agricultural Technician
8542 Agricultural Technician
8543 Farm Laborer
8552 Supervising Truck Driver
8553 Truck Driver
8563 Equipment Operator
9526 Assistant Animal Technician
9552 Botanical Garden/Arboretum Manager
9561 Senior Nursery Technician
9562 Nursery Technician
9606 Laboratory Helper
9608 Odd Jobber
566.1 Material Handler I

566.2 Material Handler II
566.3 Material Handler III
630.1 Custodian
630.2 Senior Custodian
630.3 Assistant Custodian Supervisor (B)
630.4 Custodian Supervisor
646.1 Protective Services Officer
646.2 Relief Sergeant
724.1 Technical Assistant I
724.2 Technical Assistant II
737.1 Garage Attendant
738.1 Bus Driver
738.2 Lead Bus Driver
739.1 Vehicle Mechanic
739.2 Lead Vehicle Mechanic
745.1 Truck Driver, Light
745.2 Truck Driver
745.3 Lead Truck Driver
799.1 Intern
799.3 General Helper

SERVICE UNIT (LLNL)

- 466.1 Material Handler I
- 466.2 Material Handler II
- 466.3 Material Handler III
- 491.1 Facilities Grade I - Custodian
 - Facilities Grade I - Laborer
 - Facilities Grade I - Vehicle Driver I
- 491.2 Facilities Grade II - Bunker Custodian
 - Facilities Grade II - Floor Waxer
 - Facilities Grade II - Heavy Custodian
 - Facilities Grade II - Print-out Custodian
 - Facilities Grade II - Vehicle Driver II/Dispatcher
 - Facilities Grade II - Window Washer
- 491.3 Facilities Grade III - Gardener
- 491.4 Facilities Grade IV - Vehicle Mechanic Helper
- 491.6 Facilities Grade VI - Field Worker
- 491.7 Facilities Grade VII - Bunker Worker
 - Facilities Grade VII - Concrete Sawyer
 - Facilities Grade VII - Dempster Dump Operator
 - Facilities Grade VII - Fence Erector

SERVICE UNIT (LLNL) (Con't.)

Facilities Grade VII - Hammermill Operator
Facilities Grade VII - Hole Driller
Facilities Grade VII - Equipment Operator
Facilities Grade VII - Pest and Weed Controller
Facilities Grade VII - Road Repairer
Facilities Grade VII - Scientific Equipment Operator
491.9 Facilities Grade IX - Truck Driver
Facilities Grade IX - Vehicle Mechanic
492.0 Facilities Grade X - Lead Truck Driver
493.8 Training Grade IX - Motor Vehicle Mechanic Apprentice
493.9 Training Grade IX - Motor Vehicle Mechanic Apprentice
(classroom instruction)
950.0 Protective Services Officer
950.3 Protective Services Sergeant