

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of:)
)
UNIT DETERMINATION FOR) Case NOS.
PROFESSIONAL SCIENTISTS AND) SF-PC-1001 et al.
ENGINEERS, LAWRENCE LIVERMORE)
NATIONAL LABORATORY, OF THE)
UNIVERSITY OF CALIFORNIA PURSUANT) PERB Decision No. 246-H
TO CHAPTER 744 OF STATUTES OF 1978)
(HIGHER EDUCATION EMPLOYER-EMPLOYEE) September 30, 1982
RELATIONS ACT))
_____)

Appearances: Christine Bologna, Attorney for California State Employees Association and California State Employees Association/Society of Professional Scientists and Engineers; Hirsch Adell, Attorney (Reich, Adell and Crost) for American Federation of State, County and Municipal Employees, AFL-CIO; Douglas Barton, Kent Jonas and Terry Lewis, Attorneys (Corbett, Kane and Berk) and James N. Odle, Attorney, for the Regents of the University of California.

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

DECISION

Under subsection 3563(a) of the Higher Education Employer-Employee Relations Act (HEERA or Act),¹ the Public Employment Relations Board (PERB or Board) is charged with the

*Chairperson Gluck did not participate in this decision.

¹HEERA is codified at Government Code section 3560 et seq. All statutory references are to the Government Code unless otherwise specified. Subsection 3563(a) provides:

This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all the following rights, powers, duties and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

responsibility to determine appropriate units for representation. Pursuant to that responsibility, hearings have been held before administrative law judges (ALJs) of the Board regarding petitions filed and positions taken by various labor organizations as to appropriate groupings of employees. Administrative Law Judge Terry Filliman issued his recommendation to the Board regarding professional employees on February 2, 1982. That recommendation is incorporated by reference herein. Following issuance of that recommendation, the parties were invited to brief their positions thereon to the Board itself. After careful consideration of the record as a whole, including the pre- and post-recommendation briefs by the parties, the Board has determined that a unit consisting of all professional scientists and engineers, excluding professional administrative and support classifications, employed by the Regents of the University of California (University) at the Lawrence Livermore National Laboratory (LLNL) constitutes an appropriate unit for meeting and conferring within the meaning of the Act.

DISCUSSION

California State Employees Association/Society of Professional Scientists and Engineers (CSEA/SPSE) proposes a unit composed of approximately 2700 professional employees of the University at LLNL in scientific and engineering classifications. This unit would include all professional

employees at LLNL except the approximately 230 to 400 incumbents of administrative and support services classifications.

The ALJ recommended that a unit of all professional employees at LLNL be created (ALJ's Recommendations, pp. 45-52). The University substantially agrees with his recommendation, except that it seeks to include certain classifications not recommended for inclusion by him. CSEA/SPSE adhered strenuously to its initial position that a unit comprised solely of scientific and engineering classifications is appropriate. CSEA/SPSE is the only labor organization currently seeking to represent the professional employees at LLNL.

The issue which we must decide is whether the petitioned-for unit is appropriate as requested, or whether it is inappropriate absent inclusion of the administrative and support professionals. If we were to conclude that the administrative and support professionals would not constitute an appropriate residual unit, or that the unit as requested would result in undue proliferation, we would be inclined to dismiss the petition of CSEA/SPSE and leave the professional employees of LLNL ununited in the absence of a request to represent them in an appropriate grouping.

We have considered the ALJ's recommendations in light of post-recommendation positions of the parties and the record as

a whole, and adopt his factual findings and recommendations only insofar as they are consistent herewith. We are persuaded that the scientists and engineers requested by CSEA/SPSE possess an internal and occupational community of interest as described in subsection 3579 (a).² Thus, these employees are

2subsection 3579 provides, in pertinent part, as follows:

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which such employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single

engaged in applied or pure scientific research. They possess common scientific skills, and share similar education and

classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(b) There shall be a presumption that professional employees and nonprofessional employees shall not be included in the same representation unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (a) establishes.

(c) There shall be a presumption that all employees within an occupational group or groups shall be included within a single representation unit. However, the presumption shall be rebutted if there is a preponderance of evidence that a single representation unit is inconsistent with the criteria set forth in subdivision (a) or the purposes of this chapter.

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training requirements, as reflected in the record. They share common supervision and a common system of reporting, through a matrix structure, which differentiates them from virtually all of the employees in administrative and support roles.

As noted above, there is universal agreement among the parties that LLNL employees should be unitted separately from the other employees of the University. We agree that it is appropriate to do so, for the reasons cited by the parties and reiterated by the ALJ. Once having separated LLNL professionals from other professional employees in the University system, the argument that the residue of administrative and support professionals is too small to constitute a potentially appropriate residual unit, or that it would amount to undue unit proliferation to allow for the potential of such a residual unit to be created in the future, loses much of its vitality. The administrative and support classes not sought by CSEA/SPSE constitute approximately 10 to 20 percent of the total professional complement at LLNL. While they interact with scientists and engineers, largely in a coordinative and supportive role, this interaction does not evidence a community of interest in and of itself. If these employees are left ununited at this time, the potential exists for two units of LLNL professionals instead of one. This does not constitute undue proliferation within the meaning of HEERA, nor are we convinced by the record that it would unduly hamper the efficient operations of the University or have an adverse

effect on meet and confer relationships. Thus, while a unit comprised solely of scientific and engineering classifications may not be the ultimate, best or only appropriate configuration for LLNL professionals, we are convinced, based upon a thorough examination of the record and party positions in light of the statutory criteria, that it is an appropriate grouping. It will serve to provide the employees sought with the right to effective representation, and will not deprive the residue of employees at LLNL of their right to remain unrepresented or to seek exclusive representation in the future should they desire to do so.

Disputed Classifications

The ALJ failed to include five classifications in the unit. These five classifications were not petitioned for, and no party seeks to represent them. They are the administrative planner (163), post-doctoral research staff member (220), planner-estimator (355), division/department administrator I (467) and division/departmental specialist I (468). An examination of the limited evidence available in the record regarding these classes indicates an insufficient basis to place any of them in a scientists and engineers unit, as they appear to lack a community of interest with the scientists and engineers.

The medical laboratory technologist (750) and occupational health nurse similarly appear to be support staff, and lack a community of interest with the "200" and "300" series

employees. We conclude that it would be inappropriate to include them in the scientists and engineers unit.

ORDER

Based upon the foregoing Decision and the record as a whole, the Public Employment Relations Board hereby ORDERS:

1. All professional scientists and engineers employed by the Regents of the University of California at Lawrence Livermore National Laboratory constitute an appropriate unit for the purpose of meeting and conferring in good faith pursuant to Government Code section 3560, et seq. The inclusions in this unit are set forth in the attached appendix.

2. 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.

3. The appropriate unit described above shall exclude managerial, supervisory and confidential employees of the Regents of the University of California.

4. The Board hereby ORDERS a representation election in this unit 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

PROFESSIONAL SCIENTISTS AND ENGINEERS, LLNL

<u>Code</u>	<u>Job Title</u>
221	Biochemist
225	Biomedical Scientist
228	Biologist
230	Environmental Scientist
235	Biophysicist
242	Chemist
249	Engineer
256	Mathematician
263	M.D.
265	Metallurgist
270	Physicist
277	Physiologist
285	Computer Scientist/Mathematical Programmer
290	Patent Advisor
350.0	Technical Associate
350.1	Technical Associate, Senior
351.0	Design Associate
351.1	Design Associate, Senior
354	Technical/Scientific Coordinator