

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PROTECTIVE SERVICE OFFICERS')
ASSOCIATION,)
)
Petitioner,) Case No. SF-RR-724-H
)
and) PERB Decision No. 974-H
)
REGENTS OF THE UNIVERSITY OF)
CALIFORNIA (LAWRENCE LIVERMORE)
NATIONAL LABORATORY),)
)
Employer.)
_____)

Appearance; Hanson, Bridgett, Marcus, Vlahos & Rudy by Douglas H. Barton, Attorney, for Regents of the University of California (Lawrence Livermore National Laboratory).

Before Hesse, Chairperson; Caffrey and Carlyle, Members.

STATEMENT OF CASE

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Regents of the University of California (Lawrence Livermore National Laboratory) (LLNL), from the proposed decision of the administrative law judge (ALJ).

On October 16, 1991, the Protective Service Officers' Association (Association) filed a request for recognition seeking a unit of Protective Service Officers (PSOs) and Control Alarm Station Operators (CAS Operators) at the LLNL. The LLNL is a part of the University of California (University) operating under contract with the Department of Energy (DOE) located in Livermore, California and several other places.

The request for a unit of PSOs dates back to an initial

determination of appropriate units for the LLNL in 1982 which resulted in an extensive hearing and a PERB decision (Unit Determination for Service Employees of the University of California (1982) PERB Decision No. 245-H).

In 1982, PERB refused to apply the holding in Sacramento City Unified School District (1977) PERB Decision No. 30, which held a unit of security guards appropriate where the employer requires a unit separate from other employees because of the unique nature of providing security. The University did not request such a unit in the 1982 decision so PERB applied the criteria established by regulation section 3579(a) of the Higher Education Employer-Employee Relations Act (HEERA).¹

¹HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3579 of HEERA provided in part:

(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

At that time, PERB held that PSOs, who are essentially security guards without peace officer status, were appropriately included in a unit of service employees and gave the following reasons:

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

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 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.

(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.

This section was subsequently amended, effective January 1, 1991. The changes were non-substantial and have no impact on the disposition of this case.

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. (Unit Determination for Service Employees of the University of California (1982) PERB Decision No. 245-H, pp. 9-10.)

The Board stated PSOs were unskilled, shared a common interest with other service employees, and PSOs established as a separate unit would result in fragmentation of units. In the subsequent election, no exclusive representative was elected for the service unit.

In 1984, the Laborers International Union Local 1276, AFL-CIO filed a new petition seeking a separate unit of PSOs at LLNL and alleged changes in working conditions justifying such a unit. After a hearing, the ALJ (the same ALJ in the instant case) held that in response to a world-wide threat of terrorism, PSOs through increased training had been transformed into a para-military security force and now met the criteria for a separate bargaining unit. The ALJ's decision was affirmed by the Board in Regents of the University of California (1986) PERB Decision No. 586-H. In that decision, the Board found that in addition to more training, the duties had been increased by the addition of a canine team, a SERT team (same as SWAT) and other more

sophisticated security measures in crowd control, arrest methods and executive protection. All of this warranted a separate unit. In that proceeding, the University argued that PSOs should be in a technical unit rather than a separate unit since the upgrading of the skills was more compatible with other technical employees such as fire-fighters. The Board rejected this argument apparently on the ground that no petition to include PSOs in a technical unit had been filed and the record would not support such a request anyway.

Again, an election was held but no exclusive representative received a majority of the votes.

After the filing of this petition on October 16, 1991, by the Association, a hearing was held on April 20, 1992, which continued through April 24, 1992. The Association requested a unit that included Central Alarm Systems Operators, also known as Control Alarm Station Operators (CAS Operators). As developed during the hearing, CAS Operators were not in existence in 1985, but the Association now wished them to be included.² At the time of the hearing there appeared to be 196 PSOs and 15 CAS Operators.³

The University submitted letters in opposition to the Association contending that a unit of PSOs and CAS Operators were not an appropriate unit and both classifications should be placed

²The classification of Central Alarm System Operators, 653.0, appears to have been established in 1988. See letter to Regional Director dated December 18, 1991.

³Supra footnote 2.

in a LLNL system-wide bargaining unit of technical employees. The University also argued that a unit of PSOs and CAS Operators had never been designated as an appropriate unit as the PERB 1986 decision only concerned PSOs, therefore, the petition should be dismissed.

A proposed decision was issued by the ALJ on July 15, 1992. The ALJ concluded that the record did not show any substantial changes in working conditions for PSOs from that established by the record in 1986 and therefore, the previous ruling was binding in the instant hearing. Secondly, there was no showing by the University that the unit approved in 1986 was inappropriate. Thirdly, the University had not filed a petition to obtain approval of a unit of technical employees including PSOs and CAS Operators and the record would not appear to support it anyway.

Fourthly, the ALJ found that CAS Operators had a sufficient community of interest with PSOs and should be included within the unit and if voluntary recognition was not granted, an election should be held.

ISSUE

The ALJ states the issue in his decision as whether a unit of PSOs and CAS Operators at the laboratory is an appropriate unit? The issue, more properly stated, is whether there is sufficient evidence in the record to support a decision that PSOs and CAS Operators should be in the same unit?

DISCUSSION

We conclude that the record will not support a decision that PSOs and CAS Operators are an appropriate unit. Moreover, there is an absence of evidence to support a finding of sufficient community of interest to warrant membership of both classifications in the same unit. The evidence clearly supports a finding to the contrary.

THE ALJ'S DECISION

The ALJ reviewed extensively the findings in the 1986 Board decision (Regents of the University of California, supra. PERB Decision No. 586-H) which found that PSOs should be included in a separate unit. In that case, PERB found that between 1982 and 1985, the training of PSOs had improved substantially both in quantity and quality. Examples of the additional training were in the area of crowd control, arrest methods, executive protection, hostage negotiation, canine units, use of deadly weapons, self defense, use of SWAT teams. The manner of compensation was different as to over-time and "on call" pay. PSOs were subject to physical fitness standards and psychological examinations during selection which related to their use of firearms and the fact that they carry guns. They were also subject to a special supervision and at that time, there was no history of representation. All of the above were reviewed to support the 1986 Board determination that PSOs were different in every way from other technical and professional employees at LLNL. The ALJ also noted that the goals of security of the

institution and protection of special nuclear material was unique to PSOs.

He then analyzed the findings of the current hearing and concluded that there had been little change in working conditions since 1985 except an upgrade in the quality and sophistication of the means of providing security. There were however, system changes. A new system, in the planning stages in 1985, called Secure Integrated Livermore Alarm System (SILAS) was implemented in 1988. The Controlled Access by Individual Member (CAIN I) which controlled identification and access of employees to LLNL was upgraded to CAIN II. Security was improved by double fencing rather than single fencing and the addition of more cameras and elevated guard stations. Also PSOs, in 1992, are now required to complete more paperwork and are the subject of a new program related to drug testing (Presumed Secure Assurance Program, PSAP). All of these changes (as required by the U. S. Department of Energy regulations) supported the ALJ's conclusion that nothing has occurred to change the 1986 PERB decision (Regents of the University of California, supra, PERB Decision No. 586-H) that PSOs are an appropriate unit.

CONTROL ALARM STATION OPERATORS

The ALJ also held that CAS Operators should be included in the unit. In 1985, there was a console which monitored access areas and registered alarms and which was tied into the Police Information Network which included other law enforcement agencies and their computers and the National Crime Information Center of

the Department of Justice. The PSOs operated the console in 1985. In 1988, it was replaced by a more sophisticated console and alarm system called "ARGUS." While the basic function was the same, the console was integrated with SILAS and CAIN II and an extensive surveillance camera system which allows the operator to view all sensitive areas of the institution with zoom lenses. A new classification (CAS Operator) was established for just those employees who operated the system. Phillip Kasper, a Protective Force Division Leader, testifying for the University, stated as follows:

A Were some PSOs doing the duties of CAS Operators? Yes, sir.

Q Okay. And how are CAS Operators trained?

A Well, there's a formal training program set aside for the CAS Operators, put together by the CAS Supervisor, Wendy Bishop. It includes about 200 hours of training. It covers all the subject matter that we discussed through that ARGUS pamphlet, the graphic display terminal, how to work the CCTV, call up cameras. The most part of that training is essentially one on one, on the job, buddy system, kind of training where the check-off verification for each subject area, before the CAS Operator is truly certified and is able to work on his own.

Q You mentioned Wendy Bishop. Is she a supervisor in the Protective Force Division?

A She's supervisor of the CAS, of the CAS Operators.

Q What is her job classification?

A It formerly was a PSO Lieutenant. She is now no longer a PSO classification. She's

a different classification and I'm not quite sure what the name of it is.

Q Had she been a PSO at one time, before becoming a PSO Lieutenant?

A Yes.

Q And subsequently a PSO Sergeant or a Protective Service Sergeant, before becoming a Protective Service Lieutenant?

A That's correct.

Q And are there training manuals or materials for the training of the CAS Operators?

A Yes, there are.

Q And is there on-the-job training provided to the new CAS Operator after they've received the classroom instruction on the operations of the console?

A Yes, there is. In fact, there's probably, as I mentioned more on-the-job style of training in the CAS training program, than there is classroom instruction. Essentially they're paired up with a senior operator who has been selected as a training person, and works through all of the subject areas in the curriculum, to that person, that trainer's satisfaction. So in that sense, it's pretty much all OJT.

Q Do the trainers sign-off on the person before they can independently work as a CAS Operator?

A That's part of the certification process.

Q And does the certification process include testing on the skills and knowledge necessary to operate the Central Alarm Station?

A Yes, it does.

(Tr. Vol. Ill, pp. 84-86.)

On cross examination of Richard Bockover, a Protective Service Officer since 1980 at LLNL, testifying for the Association concerning the CAS Operators, stated as follows:

Q And how about the CAS operators?

A The CAS operators report to the CAS supervisor, who is Wendy Bishop. And I believe that her next reporting point would be Phil Kasper, but I can't swear to that.

Q Do CAS operators carry guns?

A No, they don't.

Q Is there any requirement that they attend an academy type --a police academy type training?

A No, there is not.

Q I believe you said they didn't have the same physical fitness requirements that PSOs have; is that correct?

A No, they have no physical fitness requirements.

Q Are they covered by the PSAP?

A Not at this time. It was our understanding that neither they nor upper management would be covered by it. But the testimony from John Palmer said that that's still being talked about.

Q Do they get paid to do physical workouts, exercise?

A No, they don't.

(Tr. Vol. IV, pp. 173-174.)

In concluding that CAS Operators should be included with PSOs in a unit, the ALJ stated three reasons to support a finding of a community of interest. The first reason was that the new console system (which is more sophisticated in 1988 than it was

in 1985) had been operated by PSOs prior to 1988. Secondly, some PSOs are also certified CAS Operators. Thirdly, both classifications share common supervisors and common goals. This is simply not convincing. The CAS Operators, whose job it is to view the computer screens, manipulate the surveillance cameras, and pass alarm information to PSOs as well as the other personnel in the LLNL, have nothing in common with PSOs except to be a part of the security system. They do not carry firearms or receive training in doing so. They do not respond to the alarms or require training in arrest methods, crowd control, hostage negotiations, canine units, technical sweeps of meeting rooms or SWAT team techniques. They are not required to meet physical standards or required to undergo extensive psychological examinations and behavioral event selection interviews before initial employment. In other words, they are not a para-military force required to respond in a tactical mode to any intercession into the institution. The fact that PSOs at one time operated a less complicated console system in addition to their duties does not establish a community of interest. In reality the only element CAS Operators might now have in common with PSOs is the necessity for shift duty on a 24 hour basis. The extensive analysis by the ALJ of all the elements that support a finding that PSOs are unique among all the employees at the LLNL, clearly establish a finding that PSOs have nothing to establish a community of interest with CAS Operators.

Consequently, none of the criteria of HEERA section 3579(a)

has been met with the possible exception of a common supervisor at a fairly low level. That circumstance results from the fact that both PSOs and CAS Operators are part of the now very sophisticated security system in place at LLNL. It does not, of itself, provide a grounds for establishing a combined unit of PSOs or CAS Operators.

CONCLUSION

Although the record does not support a finding that a unit composed of PSOs and CAS Operators is an appropriate unit, it does support and the Board reaffirms Regents of the University of California (1986) PERB Decision No. 586-H that the PSOs are an appropriate unit under section 3579 of HEERA.

ORDER

The petition is, therefore, remanded to the regional director to take such action as is consistent with this Decision.

Members Caffrey and Carlyle joined in this Decision.