

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY,

Employer,

and

ACADEMIC PROFESSIONALS OF
CALIFORNIA,

Exclusive Representative,

and

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Exclusive Representative.

Case Nos. LA-UM-724-H
LA-UM-725-H

PERB Decision No. 1881-H

January 23, 2007

Appearances: Rothner, Segall & Greenstone by Bernhard Rohrbacher, Attorney, for Academic Professionals of California; Catherine Kennedy, Attorney, for California State Employees Association.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by California State University Employees Union, SEIU Local 2579 (CSUEU), an affiliate of California State Employees Association (CSEA)¹, of an

¹CSEA was comprised of four separate entities, a civil service division, a retiree division, a supervisory division, and employees of Trustees of the California State University (CSU). Subsequent to the petition and hearing, the CSU Division of CSEA separately incorporated as an affiliate of CSEA. It incorporated as CSUEU. PERB accepted the amendment to the certification in January 2005.

administrative law judge's (ALJ) proposed decision finding that a new classification belonged to Unit 4, thereby partially denying a petition that would place the new classification in Unit 7.

We have reviewed the entire record in this case including, but not limited to, the unit modification petition, the parties briefs, the transcripts and exhibits, the proposed decision, CSUEU's exceptions, and Academic Professionals of California's (APC) response, and, in accord with the discussion below, find it appropriate to remand this case to the ALJ to conduct a hearing for the purpose of taking additional evidence.

BACKGROUND

The CSU, a higher education employer under the Higher Education Employer-Employee Relations Act (HEERA),² filed a unit modification petition on February 24, 2004 seeking:

1. The creation of a new library services specialist (LSS) classification to be placed in CSU Unit 7, Clerical and Administrative Support Services;
2. The elimination of library assistant (LA) I, II, III, and IV classifications from Unit 7; and
3. The elimination of lead library assistant (LLA) II, III, and IV classifications from Unit 4, Academic Support.^{3,4}

²HEERA is codified at Government Code section 3560, et seq.

³CSU was essentially combining the two classifications of LAs and LLAs. There was no dispute between the parties that the two positions should be combined for they shared a community of interest. They worked in the same locations, at the same hours, under the same supervisors, and under the same rules and policies.

⁴LLAs were originally titled Supervising Library Assistants (SLA). LLAs and SLA will be used interchangeably.

Simply stated, CSU abolished two classifications, LAs and LLAs, and created one new classification, LSS. The abolished classifications were placed in different units. The LLAs were placed in Unit 4 by PERB in Unit Determination for Employees of the California State University and Colleges (1981) PERB Decision No. 173-H (Unit Determination for Employees). LAs, on the other hand, were placed in Unit 7 by stipulation. Unit 4 and Unit 7 are represented by different unions who now seek to place the new LSS classification into their respective unit.

On March 5, 2004, APC filed with PERB its own unit modification petition (Case No. LA-UM-725-H), seeking clarification of the assignment of duties of the LLA classification.

On March 19, 2004, CSEA sent PERB a letter opposing CSU's petition. Later, on March 30, 2004, CSEA sent PERB another letter, this time supporting CSU's petition.

ALJ'S PROPOSED DECISION

The ALJ found that the LSS classification belonged in Unit 4 as opposed to Unit 7. In reaching this conclusion, the ALJ first examined whether PERB's original determination regarding SLA employees was applicable to the new LSS employees. The ALJ concluded that it was, stating, "[i]t is thus clear from the draft classification standard and other evidence that LSS employees will now be doing the work that was formerly done by the SLA employee [sic] PERB placed in Unit 4." In reaching this conclusion, the ALJ dismissed CSU and CSUEU's argument that LSS employees would not be performing as much "lead" work. The ALJ commented that "lead" work was not "something that PERB particularly attributed to SLA employees." The ALJ noted that, even if it were, LSS responsibilities at skill level III explicitly include "providing lead direction to other library . . . staff." The ALJ further

commented that "the evidence shows that such 'lead' work is already widely dispersed in some campus libraries."

Having determined that PERB's original determination regarding SLAs was applicable to the new LSS classification, the ALJ employed the rebuttable presumption test set forth in State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S (Personnel Administration): "PERB's placement is presumptively valid, and the burden is now on CSU to show that the proposed placement in Unit 7 is more appropriate." The ALJ examined whether CSU and CSUEU met their burden to show that the proposed placement in Unit 7 was more appropriate. The ALJ found that they did not. The ALJ stated that there was not a community of interest with the administrative employees in Unit 7. Unit 7 contained administrative as well as clerical employees. The ALJ noted that LSS employees were not characterized as administrative, but rather as "technical and paraprofessional." The ALJ further noted that even though LSS employees "'may assist in supporting the [library] unit's budgetary and/or other administrative activities,' [it] is in addition to their primary technical and paraprofessional duties." The ALJ summarily dismissed CSU's argument that Unit 7 is appropriate because library work has become more technical and CSUEU's Unit 9 contains technical employees. The ALJ stated that "[t]his point might have more significance if CSU was proposing to place LSS employees in Unit 9, but CSU [was] not doing that." The ALJ also dismissed CSU's argument that placing the LSS classification in Unit 7 would "'impact a minimal number of employees' because, as of October 2003, there were only 23 LLA employees in Unit 4 and 502 LA employees in Unit 7." The ALJ stated that:

This argument might be compelling if PERB had determined that the 502 LA employees belonged in Unit 7, but PERB never did so; PERB only determined that the LLA employees belonged in Unit 4. CSU's argument might be persuasive if it appeared that

the LA employees had been properly placed in Unit 7, despite the lack of PERB determination.

.....

On the whole, I find it more appropriate to leave 23 employees in a unit that PERB determined to be appropriate for them than to leave 502 employees in a unit that may never have been appropriate for them.

CSUEU'S EXCEPTIONS

CSUEU excepted to the ALJ's proposed decision on the following three grounds, the ALJ:

1. Erroneously determined that CSU failed to meet its burden of proof;
2. Misapplied HEERA section 3579 by placing the new classification in Unit 4;
and
3. Arbitrarily moved 502 employees to a unit of 2,000 employees without a showing of interest.

Each exception is discussed in turn.

CSUEU first argues that CSU met its burden under Personnel Administration which requires a petitioning party to show that the proposed unit modification is "more appropriate" to the status quo. CSUEU asserts that under Personnel Administration "more appropriate" means "that a unit need not be 'the ultimate, best or only appropriate configuration.'" CSUEU states that "[s]ince the legal presumption is to maintain the status quo and the status quo was the uncontested and happy placement of 502 [LAs] in Unit 7, the appropriate ruling should have favored moving the 23 [LLAs] to Unit 7 upon a finding of an internal community of interest between the [LAs] and [LLAs]." CSUEU also argues that the ALJ's conclusion that Unit 7 was inappropriate because PERB never determined that the 502 LAs were properly assigned to Unit 7 ignores the fact that PERB sanctioned LAs' placement in Unit 7 consistent

with the criteria set forth in Centinela Valley Union High School District (1978) PERB Decision No. 62. CSUEU further argues that both the evidence and the language of Unit Determination for Employees raises the question of whether the LLAs should have ever been classified as Unit 4 members. CSUEU states that "[a] review of the decision fails to show how these employees shared a community of interest with classifications which shared a . . . common goal of providing non-instructional services which enable students to maximize their educational experience by administering [sic] to their emotional, social, intellectual, and cultural well-being."

Second, CSUEU argues that the ALJ misapplied HEERA section 3579 when he failed to take into consideration all of the factors.⁵ Specifically, the ALJ failed to consider the criteria in HEERA section 3579(a)(1), (2) and (4). In regards to Section 3579(a)(1), CSUEU directs the Board's attention to the ALJ's lack of discussion regarding the "history of employee representation with the employer." CSUEU states that significant differences exist in the representational history:

[T]he paths of [LLAs] and [LAs] diverged when CSUEU consistently negotiated higher salaries and benefits for its members than APC was able to negotiate. [Cit. omitted.] Further testimony indicated that campuses found it difficult to recruit [LLAs] in part because they were paid lower salaries than the [LAs] with whom they worked.

CSUEU also argues that the numbers speak for themselves. The number of LLAs shrunk in size while the LA classification continued to grow. CSUEU credits this growth to a better bargaining history: "[t]he obvious reason is that [LAs], being represented by CSUEU, enjoyed a better history of representation with the employer." In regards to the "companion factor," the

⁵CSUEU agreed with the ALJ's decision that an internal community of interest exists between LAs and LLAs.

"extent in which employees belong to the same employee organization," CSUEU again references the numbers stating "the numbers attest to the overwhelming extent that CSUEU represents employees doing [LA] work." CSUEU states that "[t]he upheaval caused by moving 502 employees, who have enjoyed over 25 years of CSUEU representation, to a different unit with a different exclusive bargaining representative cannot be understated."

In regards to HEERA section 3579(a)(2), CSUEU argues that: (1) LAs make more money than LLAs, (2) APC completed negotiations and CSUEU is just entering into negotiations, and (3) the resources and bargaining strength differ. CSUEU represents 15,000 employees whereas APC represents 2,000.

CSUEU further argues that in regards to HEERA section 3579(a)(4), the ALJ failed to acknowledge or discuss how the movement of 502 employees into a unit made of 2,000 would affect the objectives of providing the employees effective representation and the meet and confer relationship.

In its last exception, CSUEU asserts that by moving 502 employees to a different unit without any showing of interest, the ALJ contradicts the holding in Personnel Administration, as well as violates PERB Regulation 32781.⁶ Such a move "ignores the established procedures for employees to choose which exclusive representative they want to represent their interests to the employer."

APC'S RESPONSE

APC argues that the ALJ correctly determined that the new classification belonged in Unit 4. APC's response to CSUEU's exceptions is summarized as follows:

⁶PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

1. CSUEU failed to rebut the presumption that the Board's original placement of SLAs in Unit 4 was improper.
2. The ALJ's conclusion that the original placement of LAs in Unit 4 was inappropriate was based upon the evidence presented at the hearing and not because PERB never determined that the LAs were properly assigned to Unit 7. Were the Board to find the placement appropriate, APC requests that the Board's decision placing SLAs in Unit 4 should be given more deference than the stipulation placing the LAs in Unit 7 because one is a contested hearing.
3. The Board should reject CSUEU's invitation to focus exclusively on two related community of interest factors, "the history of employee representation with the employer" and "the extent to which the employees belong to the same employee organization," for they ignore all other factors. APC further argues that the LAs having a higher salary range does not demonstrate a better bargaining history because "it does not tell us anything about the actual salaries earned by employees in these classifications. It may be a difference on paper only, with the actual salaries earned by LAs II, III, and IV being identical to, or even lower than, those earned by LLAs II, III, and IV, respectively." Additionally, LLAs decrease in size is not a result of its contract not being as employee friendly.
4. Lastly, the ALJ did not abuse his discretion when he placed the LSS classification in Unit 4 without requiring proof of majority support. PERB Regulation 32781 is permissive. It does not require a majority of support by evidence of the word "may." Further, Personnel Administration, the only case interpreting PERB Regulation 32781(e) is not applicable to these facts because:

[T]he issue in the present case is whether or not the ALJ abused his discretion when he did not require such proof. The Board's holding in Dept. of Pers. Adm'n that the regional director **could** require proof of majority support in that case cannot dictate a holding here that the ALJ **should** have required such proof in this case.

Additionally, Personnel Administration is distinguishable because "the petition sought to include, based on 'a change in circumstances regarding the[ir] job duties,' seven **pre-existing** classifications that had previously been **properly** excluded as supervisory." In this case, there is a new classification. Further, the new classification was to be filled by incumbents that had previously been misplaced. Therefore, "[t]he Board should refrain from requiring proof of majority support where failure of such proof would result in leaving some of the LSS employees (the former LAs) in a unit that is inappropriate--not just less appropriate~for them and, worse yet, moving other LSS employees (the former LLAs) from a unit that is appropriate for them to one that is not." APC also points out that CSUEU makes this argument for the first time on appeal.

DISCUSSION

In determining that the new LSS classification belonged in Unit 4, the ALJ misapplied the rebuttable presumption test set forth in Personnel Administration:

In order to rebut the presumptive validity of the original state unit determination, the petitioning party must show that its proposed modification is more appropriate.

The rebuttable presumption test is used when parties seek to move an existing classification from one bargaining unit to another or to separate a bargaining unit. The rebuttable presumption test was utilized by the Board in Personnel Administration when CSEA sought to separate Unit 3 into two units, one unit for teachers and librarians who worked in the State

Department of Corrections and California Youth Authority and a second unit for all remaining Unit 3 members. Additionally, while not explicitly stated, a form of the rebuttable presumption test was utilized by the Board in Regents of the University of California (1986) PERB Decision No. 586-H, when the Laborers International Union sought to remove protective service officers at Lawrence Livermore National Laboratory from the service unit and place them in their own unit. The rebuttable presumption test, however, is not properly used when placing a new classification into a unit because there is no presumption to rebut.⁷

The dissent in this case asserts that: "[e]ven if this conclusion [that the LSS classification belonged to Unit 4] could be construed as an order, the [PERB] should not treat it as one because absent a unit modification petition to add the LSS classification to Unit 4, it would be premature for the Board to address the placement of the LSS classification in Unit 4." [Emphasis added.] We disagree. First, it should be noted that the Board has yet to determine the appropriate placement of the new LSS classification or order the placement thereof. Second, when the appropriate classification is determined pursuant to our discussion above, it is not "premature" for the Board to order the placement of the new LSS classification in that unit simply because a specific petition requesting the placement of the new LSS classification in that unit was not filed. We note that two unit modification petitions were filed. If the Board were to sit idly by and wait for a third petition specifically requesting the placement of the new LSS classification in the determined unit it would be a waste of not only PERB's time and resources but also that of the parties. Furthermore, the employees would be left in a state of uncertainty because even though a determination will be made that they "belong" to a certain unit, they would not be "placed" in that unit.

Additionally, the Board is not prohibited under the HEERA from placing the new LSS classification in the appropriate unit absent a specific petition requesting such. In fact, in determining the appropriate unit and ordering the actual placement of the new LSS classification in that unit, the Board would be effectuating the policies of the HEERA. Under the HEERA, the Board is granted broad remedial power, including the authority to require affirmative action.

Specifically, HEERA section 3563 provides, in pertinent part:

This chapter shall be administered by the [PERB]. In administering this chapter the board shall have all of the following rights, powers, duties and responsibilities:

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

The Board has yet to place the new classification in a unit.⁸ Rather, in determining the appropriate placement in a unit for a new classification, it is necessary to utilize the criteria found in HEERA section 3579, e.g., shared goals, training, working conditions, interchange with other employees, etc.

The primary focus of the record in this case was whether the new LSS classification was more aligned with the LA classification or the LLA classification, as that would be determinative of what unit the new LSS classification belonged. The record is sparse regarding the criteria found in HEERA section 3579, e.g., shared goals, training, working conditions, interchange with other employees, etc., necessary to make a determination as to the appropriate placement of the new LSS classification. Thus, it is necessary to reopen the

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect to these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise effectuate the purposes of this chapter.

Additionally, PERB Regulation 32786(a) provides:

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

As such, it is not only appropriate, but necessary, for the Board to determine and place the new LSS classification in the appropriate unit.

⁸This decision does not address whether LAs were appropriately placed in Unit 7.

hearing and that the parties be permitted to introduce additional evidence including, but not limited to, additional testimony of those witnesses who testified at the hearing.

Additionally, it should be noted that the ALJ's proposed decision would have moved 502 employees to a unit comprised of 2,000 employees, thereby increasing the size of the unit by approximately 25 percent. In State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S, the California Correctional Peace Officers Association challenged the regional director's determination that proof of majority support among employees in the classification to be added to the unit was required. The regional director, exercising her discretionary authority under PERB Regulation 32781(f), required a proof of majority support because:

In situations where a unit modification petition seeks to add a substantial number of employees to an established bargaining unit, the Board has required proof of majority support as a matter of practice since adoption of the current unit modification regulations. In like manner, the National Labor Relations Board (NLRB) finds that requests similar to that herein raise a 'question concerning representation.' [Fnt. omitted.]

Based upon the above, it is my judgment that a petition to add approximately 2,000 employees to the bargaining unit, thereby increasing the unit size by more than 22% is precisely the type of situation envisioned by the Board in the discretionary language of current Board Regulation 327681(f) [sic]. Any subsequent addition to the bargaining unit of such classifications previously excluded from the unit would constitute a substantial change in the structure of that unit. Under the above circumstances, therefore, a question concerning representation necessitating the filing of majority support is raised under Regulation 32781(f), Board practice and NLRB case law.

The Board found that "the regional director did not exercise the agency's discretion arbitrarily on these facts, particularly because the size of the group of employees to be added to the unit in this instance is substantial, and could reasonably be expected to change the structure of the unit

if added thereto." As such, we believe that the ALJ should have required a proof of support from the appropriate unit.⁹

ORDER

The Board hereby, REMANDS this matter to the administrative law judge to conduct a hearing for the purpose of taking additional evidence consistent with our discussion above, and, upon completion of the hearing, make recommended findings of fact and conclusions of law in consideration of the additional evidence and the existing record. Additionally, if the unit placement determination would have the result of increasing the appropriate unit by 10 percent or more, than the new classification will only be added to the appropriate unit in the event that the appropriate unit shows proof of support. If there is no showing of proof of support, the new classification will not be added to a unit.

Chairman Duncan joined in this Decision.

Member Shek's dissent begins on page 14.

⁹We note that this is an unusual case in that CSU filed the petition. CSU, as the employer, however, could not produce the proof of support and that the burden of proof of support lay with the appropriate unit that would be increased by 10 percent or more.

SHEK, Member, dissenting: I respectfully disagree with the majority's decision to remand this matter to an administrative law judge (ALJ) for further hearing. The purpose of the majority's decision is to permit the parties to introduce additional evidence including, but not limited to, additional testimony of those witnesses who already testified at the hearing.

I believe there is sufficient evidence in this case to support the issuance of a decision on the merits. I would therefore argue against remanding this matter for further hearing before an ALJ, based on the rationale that follows. All parties were given the opportunity to appear and did appear at the hearing, during which they called, examined and cross-examined witnesses and introduced documentary and other evidence on the issues. Since all parties were afforded their right to participate in the hearing and present evidence, there is no reason to give any party a proverbial "second bite at the apple."

Contrary to the majority's statement, the proposed decision neither placed the new library services specialist (LSS) classification in Unit 4, the exclusive representative of which was the Academic Professionals of California (APC), nor "would have moved 502 employees to [Unit 4] a unit comprised of 2,000 employees" APC filed a unit modification petition (Case No. LA-UM-725-H), not asking to add the new LSS classification to Unit 4, but seeking to clarify the assignment of duties of the lead library assistant (LLA) classification.¹ The ALJ denied the joint petition of the Trustees of the California State University (CSU) and the California State Employees Association (CSEA) to place the LSS classification in Unit 7,² and stated:

¹APC's petition in Case No. LA-UM-725-H was denied; and no exceptions were filed.

²CSEA is the exclusive representative of Unit 7.

[T]he LSS classification belongs in Unit 4, and . . . CSU's petition must be denied to the extent that it would place the LSS classification in Unit 7.

.....

Because the LSS classification is found to belong in Unit 4, the portion of CSU's petition that seeks to place the LSS classification in Unit 7 is hereby DENIED.

The ALJ at no point ordered the LSS classification to be added to Unit 4. He only concluded that the LSS classification belonged to Unit 4. Even if this conclusion could be construed as an order, the Public Employment Relations Board (PERB or Board) should not treat it as one because absent a unit modification petition to add the LSS classification to Unit 4, it would be premature for the Board to address the placement of the LSS classification in Unit 4.

In the present matter, it is within the Board's purview to decide whether or not the ALJ properly:

- (1) granted CSU's unit modification petition (LA-UM-724-H), to create a new LSS classification, and to eliminate the LA I, II, III and IV classifications from Unit 7, and the LLA II, III and IV classification from Unit 4; and
- (2) denied the joint unit modification petitions of CSU and CSEA (LA-UM-724-H), to place the new LSS classification in Unit 7.

As the record demonstrates and the ALJ found, CSU established the library assistant (LA) I and LA II classifications in 1962, and the LA III classification in 1972. CSU implemented classification standards for LA I, II and III in 1978. In 1979, CSU established the supervising library assistant (SLA) classification, and in 1981, PERB placed the SLA I, II and III classifications within Unit 4. (Unit Determination for Employees of the California State

University and Colleges (1981) PERB Decision No. 173-H.) PERB held that "although these employees serve as heads of various sections within the library, their supervisory functions are exercised only with respect to clerical employees and student assistants." (Ibid., at p. 28.)

CSU did not implement classification standards for the SLA until 1991, at which time, CSU changed the title from SLA to LLA. In the same year, CSU revised the classification standards for LA, and created the "Library Assistant Series" to reflect the blurring of the distinctions between the LA and LLA classifications. There was no move to place both the LA and LLA classifications in the same bargaining unit until 2004, when CSU filed the unit modification petition in the present matter. CSU petitioned PERB to authorize the elimination of the LA and LLA classifications and the creation of the LSS classification, and to assign the new LSS classification to Unit 7. Incumbents from the "Library Assistant Series," consisting of both Unit 4 (LLA) and Unit 7 (LA) employees, will staff the LSS classification. Thus, I would affirm the portion of the ALJ's proposed decision regarding CSU's unit modification petition (Case No. LA-UM-724-H), to create a new LSS classification, and to eliminate the LA I, II, III and IV classifications from Unit 7, and the LLA II, III and IV classifications from Unit 4.

In denying the joint unit modification petition of CSU and CSEA, the ALJ found that the LSS employees would be doing the same work that was formerly done by the LLA employees PERB placed in Unit 4. The ALJ also found PERB's placement to be presumptively valid under State of California (Department of Personnel Administration)

(1990) PERB Decision No. 794-S (Personnel Administration).³

I would submit that the Board could resolve the issue of whether or not CSU or CSEA has shown that the proposed placement of the LSS classification in Unit 7 is more appropriate, without considering the presumptive validity of PERB's original placement of similar duties in Unit 4. It is well established that a party petitioning for modification of an existing unit must show that its proposed modification is more appropriate than the existing unit. (Personnel Administration; and State of California (Department of Personnel Administration) (1992) PERB Decision No. 933-S.) As joint petitioners in a unit modification petition to place the LSS classification in Unit 7, CSU and CSEA bore the burden of proof that Unit 7 was more appropriate for the new classification - a burden that the ALJ found neither CSU nor CSEA had sustained. The proposed decision aptly stated in part:

What is lacking in this case is evidence that LA and LLA employees (and thus LSS employees) have a community of interest with Unit 7 employees.

³The majority's discussion of the ALJ's misapplicability of the "rebuttable presumption test" as utilized in Personnel Administration is troubling. First, the quotation on page 9 of the majority decision left out crucial information to show that it was derived from a unilateral opinion of Member Craib in a three-way split Board decision. The entire quotation should have read, "In order to rebut the presumptive validity of the original state unit determination, the petitioning party must show that its proposed modification is more appropriate. (Emphasis in original.) I believe that the units petitioned for are more appropriate than the existing Unit 3." (Emphasis added).

Second, the majority has not explained what the "rebuttable presumption test" entails.

Third, in stating that the rebuttable presumption test is "not properly used when placing a new classification into a unit because there is no presumption to rebut", the majority ignores the extensive factual record concerning the historical development of the LSS classification. As the preponderance of the evidence demonstrates, CSU proposed the "new" LSS classification for the purpose of creating a single classification that united Unit 4 and Unit 7 employees, who had been performing the same job in the same location under the auspices of the "Library Assistant Series" since 1991.

There is sufficient evidence in the record for the majority to render a decision affirming or reversing the portion of the proposed decision denying the placement of the LSS classification in Unit 7 based on the failure of CSU and CSEA to meet their burden of proof. In stating that the "record is sparse regarding the criteria found in HEERA section 3579,.. " the majority appears to have overlooked the case record that the ALJ and the parties to these proceedings have dutifully created. As will be explained further below, the evidence in this record sufficiently demonstrates the commonality among the LAs and LLAs, who will be combined to form the LSS classification, and addresses whether the LSS classification is distinct from Unit 7. More specifically, the evidence shows that CSEA's Unit 7 contains administrative as well as clerical employees, and the LSS employees are characterized as "technical and paraprofessional." The proposed decision stated, in part:

The draft [LSS classification standard] gives the following overview of the four skill levels:.

Position Skill Level I - Incumbents at this level perform clearly defined tasks, typically within one or two core functions. Incumbents may oversee student workers performing similar or related work within the library unit. [Emphasis added.]

Position Skill Level II - Incumbents at this level work independently to [sic] perform more complex technical tasks in a specified functional area within a library unit and may provide functional oversight for assigned area. Incumbents also may be responsible for coordinating work of student workers assigned to the area and may participate in hiring, training, evaluating and payroll processing of student workers. [Emphasis added.]

Position Skill Level III' - Incumbents at this level perform more complex and/or specialized technical and paraprofessional library duties to support daily operations and/or programs. Incumbents often are responsible for overseeing daily operations of a library unit(s), including providing lead work direction to other library and clerical staff, as well as student workers, and may assist in supporting the unit's budgetary and/or other administrative activities. [Emphasis added.]

Position Skill Level IV - Incumbents at this level perform the most complex paraprofessional and/or specialized library

functions to support library operations and programs.

Incumbents often are responsible for overseeing daily operations of (a) large or significant library unit(s), which may include directly or indirectly providing lead work direction to other library and clerical staff, as well as student workers, assigned to the unit(s). Incumbents often are involved in supporting the unit's budgetary and/or other administrative functions.

[Emphasis added.]

The draft lists a dozen 'core functions' or 'key functional areas.' including circulation, reserves, and cataloguing and bibliographic control. [Emphasis added.]

.....

Both CSU and CSEA correctly point out that CSEA's Unit 7 contains administrative as well as clerical employees. This point would have more significance if LSS employees were characterized as administrative, but they are not; the draft classification standard characterizes them instead as 'technical and paraprofessional.' It is true that at Skill Level III and above LSS employees 'may assist in supporting the [library] unit's budgetary and/or other administrative activities,' but this is in addition to their primary technical and paraprofessional duties. This is hardly enough to show a significant community of interest with the administrative employees in Unit 7. [Emphasis added.] (Proposed dec, at pp. 6, 12.)

CSU presented three witnesses who testified that as a result of technology, the number of employees in the "Library Assistant Series" decreased as the level of their expertise increased. The job duties of LAs have evolved from clerical to para-professional and technical. Since LAs and LLAs are performing a higher level of work, fewer LLAs are needed. LAs and LLAs have the same community of interest - working in the same locations, having the same supervisors, and following the same policies and procedures.

CSU witness Senior Manager of Compensation and Information Projects, CSU Chancellor's Office, Gina Caywood (Caywood), testified that APC's Unit 4 covered student-related positions, including credential analyst, student service professionals, evaluators, and LLAs. Caywood's testimony also stated that CSEA's Unit 7 was a large unit consisting of a

wide range of administrative positions and administrative classifications, ranging from the LAs to administrative support and administrative coordinators.⁴

According to Caywood, CSEA's Unit 9 is a very large unit, consisting of a very wide range of administrative professional, information technology and professional type positions.

Caywood further testified that the new LSS classification would better reflect the current scope of work. It would incorporate the broader role of the para-professional on the library, and their broader supportive role to the librarian in a variety of areas, such as special collections and cataloguing. It would reflect the incorporation of technology and the Internet into the delivery of library services and information.

Caywood also stated that as a result of technology, the LAs and LLAs had taken on a much broader role in the library. The technical level of work being performed by LAs had "definitely" increased. There is a lot more involvement with technology. Caywood elaborated that it was not just a question of using and understanding databases, or using different computer related tools to do their job, but also of understanding the impact of their decisions on global changes in a database. Caywood emphasized that the "Library Assistant Series" was "definitely ... closer to a professional level." Both LAs and LLAs perform a wide range of duties, at a higher level of technical para-professional type work.

Caywood testified that CSU proposed to create one classification with four skill levels encompassing the broad range of library assistant work because there was no difference in the work done by the LAs and the LLAs. Employees would all be in the same classification, namely the "Library Services Series." They would all have the same class code, and be in the same group with different skill levels denoting different scopes of responsibilities.

⁴CSEA attached a certification of representative for "Unit 7 - Clerical and Administrative Support Services," dated February 17, 1982, to its appellate brief filed with the Board. The classifications are overwhelmingly clerical, secretarial, or administrative.

Cay wood also stated that a CSU study had found that LAs and LLAs worked side by side. Usually, LAs are assigned to a certain function and they would back up other functions. At some smaller campuses where there are fewer staff, the LAs have to support a broader range of functions, but typically the LAs and LLAs worked side by side in every section of the library, be it circulation, access services, or technical services.

CSU witness Associate Dean of the University Library, CSU Long Beach, Henry Dubois (Dubois), testified that library operation had undergone revolutionary changes. It relies upon technology for virtually every aspect of the operation: ordering of books, cataloging, circulation, and statistics. Dubois stated that CSU used an integrated library system that provided remote access to electronic information databases for CSU librarians and users. CSU libraries are conduits to resources located locally and internationally. LAs and LLAs are required to have the ability to manage these increasingly complex and changing electronic systems. The technical skills that are required eclipse the managerial aspects of the job.

CSU witness Dean of the University Library, CSU Cal Poly Pomona, Harold Schleifer (Schleifer), testified that over time, LAs were required to have a lot more expertise and judgment in choosing among a variety of precedents and guidelines that would apply to a particular situation. The library has moved from an environment of quality control into a quality assurance mode of work. A lot of the information actually comes from colleagues that are outside the library through "list serves," discussion groups and trading sessions. With the integration of technology, the whole organization is less stratified than before. There is more interdependence and integration. Schleifer also stated that some of the jobs had been eliminated or were being done in different ways. The LAs in his library are within the various units. There librarian and the LAs at various skill levels would accomplish a project or a process together by assembling "various knowledge." The LSS classification would provide increased flexibility that could be applied in all 23 different campuses.

APC introduced four witnesses who testified to the duties of a LA IV, Lead, and a LLA IV, and the negotiation history over the salary range of LLAs.

APC witness Barbara Stephens, a LA IV, lead at CSU Sacramento testified at the hearing that over 50 percent of the duties of a LA IV, lead, involved "supervision in management," including revision of current job description, evaluation, formation of hiring committees and training.

APC witness Benjamin J. Shaw, a LLA IV at CSU Sacramento, testified that he acted as the building coordinator, supervised various subunits in access services, and handled all personnel matters relating to community service officers.

APC witness Charles Goetzl, president of APC, testified that during the negotiations that transpired during 2000 and 2001, CSU proposed to increase the salary range of the LLAs, but not the actual salary amount. APC proposed that CSU adopt an "in-range progression" for LLAs, as a means to eliminate whatever salary differentials existed between the LA and LLA classifications. The "in-range progression" would increase an employee's salary within the employee's then salary range, not as a result of a reclassification, but rather as a result of increased responsibilities of duties for market equity reasons.

As a witness for APC in addition to CSU, Schleifer testified that only LAs, LLAs and the librarians would answer the bibliographically based questions from the library patrons. Employees holding clerical positions would answer non-bibliographically based questions such as library hours.

CSEA called one witness, a Library Assistant III at CSU, Cal Poly San Luis Obispo, Joan Kennedy (Kennedy), and a member of Unit 7. Kennedy testified that employees in clerical positions did not perform library assistant work.

Based on the above summary of testimonial and documentary evidence, I would conclude that there is sufficient evidence to determine that there is a commonality between

LAs and LLAs who are both part of the proposed LSS classification. I would therefore affirm the portion of the ALJ's proposed decision regarding CSU's unit modification petition (Case No. LA-UM-724-H), to create a new LSS classification, and to eliminate the LA I, II, III and IV classifications from Unit 7, and the LLA II, III and IV classification from Unit 4. There is also sufficient evidence to determine whether the ALJ in the proposed decision properly denied the joint petition of CSU and CSEA to place the new LSS classification in Unit 7 by concluding that the petitioners had failed to meet their burden of proof. I respectfully submit that the majority should consider the entire record in this case and issue a decision on the merits. I therefore dissent from the majority's decision to remand this matter for further processing of the parties' petitions, and another hearing before an ALJ.