

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of:)	
)	Case No. S-R-1 - 56 -S
Requests for Reconsideration and)	
Supplemental Decision and Order)	
)	
Unit Determination for the)	PERB Decision No. 110d-S
State of California Pursuant)	
to Chapter 1159 of the Statutes of)	March 20, 1981
1977 (State Employer-Employee)	
Relations Act).)	
)	

Appearances: Janet Vining for Agricultural Labor Relations Board Workers Union; Ken Brown for California Correctional Officers Association; Dick Baker for Professional Engineers in California Government; John L. Sullivan for State Trial Attorneys Association; Ronald Yank, Attorney (Carroll, Burdick & McDonough) for California Department of Forestry Employees Association; Russ Richeda, Attorney (Carroll, Burdick, & McDonough) for Association of Special Agents of the California Department of Justice; Jeff Paule, Attorney (Geffner & Satzman) for Administrative Law Judges Council; Hugh Myers for Association of State Agriculture Marketing Specialists; Walter Oliver for State Employees Printing Trades Alliance; Morris Evenson for Painters Union Local #4, I.B.D.A.T., AFL/CIO; Dick Baker for Association of California State Attorneys; Dick Baker for California Medical Technical Assistants Association; Ted Costa for Union of American Physicians and Dentists; John Cohenour, Attorney for Fire Marshalls, Local S-9; Christopher Lee, Attorney for California Fish and Game Wardens Protective Association; Robert Bezemek, Attorney for International Union of Operating Engineers, Stationary Engineers Division, State of California; Dick Baker for California State Police Association; Tom Rankin for Local 22, International Federation of Professional and Technical Engineers, AFL/CIO; Tom Rankin for California League of Engineering & Allied Technical Employees (CLEATE), Local 22; Herb Drosdat for California Association of Planners; L. Dale Hankins and Christine A. Bologna for California State Employees Association; Ralph Tornatore, Jr. for California State Employees Association; Ralph Tornatore, Jr. for California Association of Highway Patrolmen; Meladee M. Force for California Nurses' Association; Board of Equalization Tax Auditors Association & California Association of Auditors; Duane Lovass for Association of Criminalists, California Department of Justice; Valerie Tibbett for California Welfare Hearing Officers Association; Ray Tharp for American Federation of State, County and Municipal Employees, AFL-CIO; Dorothy Cannon for Hearing Reporters Council-CASHR; Mario Fracchia for Association of California State Chemists; Tom Rankin

for State Employees Trades Council, Local 1268, LIUNA; Neil Bodine for Teamsters Local 960; Pat Hallahan for State Employees Union, Local 411, SEIU AFL/CIO; Bill Grimm for California Association of Human Services Technologists; Dorothy Church for California Highway Patrol Radio Dispatcher; Dean Cofer for IBEW, Local 1245; Martin Morgenstern for Governor's Office of Employee Relations.

Before Gluck, Chairperson; Jaeger, Moore, Tovar, Members.*

The text of the decision and Order begins on page 1.

*Chairperson Gluck and Members Jaeger and Moore participated in this decision in its entirety. Member Tovar participated only in

Section II, Parts D and E of the decision.

I. REQUESTS FOR RECONSIDERATION

Following the issuance of PERB Decision No. 110c-S, 5 PERC 12014 (1980) on December 31, 1980, the Public Employment Relations Board (hereafter PERB or Board) received numerous requests for reconsideration of that decision.

PERB rule 32410(a) *1 pertains to reconsideration of Board decisions and states:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision with the Board itself within 10 days following the date of service of the decision. The request for reconsideration shall be filed with the Executive Assistant to the Board and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required.

The Board has considered all submitted requests for reconsideration and has determined that extraordinary circumstances exist which warrant reconsideration of PERB Decision No. 110c-S. These circumstances include the complexity and volume of the evidence presented, the number of parties represented, the number of briefs submitted, and the sheer magnitude of the task of identifying and determining the employees to be excluded as managers, supervisors, or confidential employees or employees otherwise excluded by Government Code section 3513(c) of the State Employer-Employee Relations Act (hereafter SEERA). *2

Many of the parties seeking reconsideration have merely repeated the arguments previously raised and have failed to present any new legal or factual issues at this time. Because the Board thoroughly considered those arguments before issuing Decision No. 110c-S, we are not now persuaded that there should be any substantive changes in the exclusions ordered.

Several Requests for Reconsideration brought to the attention of the Board certain technical errors. The Board orders that these technical errors, as well as, certain other such errors be corrected as directed pursuant to Appendix A of this decision. The Board further orders that any technical errors discovered in the future be presented to the regional director for appropriate action in accordance with this decision.

Several parties requested that the Board reconsider footnote 24 at p. 41 of PERB Decision No. 110c-S and not establish a rule for awarding attorneys' fees in an unfair practice case in the instant representation case.

Footnote 24 was in fact included to indicate that the

Board was considering the question of attorneys' fees pursuant to its broad authority under section 3541.3(n), not under 3541.3(i) which pertains to unfair practices. The Board agrees with the parties that the footnote requires clarification, and it is reworded to read as follows:

24) Section 10(c) of the NLRA more closely resembles section 3541.3(i) as both deal with violations of their respective acts. We are persuaded, however, that the same standard for determining attorneys' fees under section 10(c) of the NLRA should be applied when PERB acts under authority of section 3541.3(n). We leave unanswered the question of what standard to apply when we act under section 3541.3(i). See footnote 21, supra, at page 39.

II. SUPPLEMENTAL DECISION AND ORDER

A. APPENDIX D OF PERB DECISION NO. 110c-S

Appendix D listed certain classifications in Units 6 and 10 which the parties' stipulations claimed to cover. The Board retained jurisdiction and ordered the parties to file perfected stipulations with the Board no later than January 31, 1981.

The parties filed perfected stipulations for both Units 6 and 10 on January 30, 1981 (attached hereto as Appendix B), and the Board accepts them. The Board finds that the stipulations are supported by the facts and that the stipulations sufficiently delineate the stipulated classifications to be excluded.

On page D-3 of its decision, the Board listed purported split classifications for Unit 10 including the following classifications:

JW 63	4897	Energy Project Specialist III (Various Projects)
JW 65	4899	Energy Project Specialist V (Various Projects)
SS 10	7858	Research Specialist V Various Studies
SS 40	7861	Research Specialist I Various Studies

In the January 30th perfected stipulations submitted to the Board, the parties did not list any excluded positions for the above purported split classifications. The Board finds, therefore, that the above four classifications are not split classifications but are fully included within Unit 10. Reference to these classifications is deleted from Appendix D, p. D-3 of PERB Decision No. 110c-S.

B. APPENDIX E OF PERB DECISION NO. 110c-S

In the Board's Decision No. 110c-S, it listed in Appendix E certain positions in Units 1, 4, 6 and 19 claimed to be

excluded from participation in representation units by the parties' stipulations. The Board retained jurisdiction and ordered the parties to file perfected stipulations with the Board prior to the date set for applicable representation elections.

The parties have filed perfected stipulations for all units. The Board finds that the stipulations are supported by the facts and that the stipulations sufficiently delineate the stipulated excluded positions. The Board, therefore, accepts the submitted stipulations.

Appendix C attached to this decision contains the lists of positions which the parties have stipulated are excluded.

C. APPENDIX F OF PERB DECISION NO. 110c-S

In Appendix F of PERB Decision No. 110c-S, the Board considered the exclusion of certain classifications for which stipulations were entered regarding State employee status. Such matters were remanded to the Chief Administrative Law Judge to take evidence at a hearing on the issue of whether such employees are covered by SEERA. The Board has been provided with the hearing officer's recommendations which are attached hereto as Attachment 1. The Board has determined, with four corrections, to adopt the recommendations submitted by the hearing officer and to amend Appendix F of PERB Decision 110c-S consistent therewith. The submitted recommendations are amended as underlined below:

1. p. 5; Staff Services Manager I, class code 4800, correct schematic code number KC 90;
2. p. 5; The second paragraph of recommendation number two shall be amended to read as follows:

Based on the record, it is recommended that the employees at the SPB employed in the foregoing classifications be excluded from the coverage of SEERA because they are not "state employees" within the meaning of Government Code section 3513(c).

3. p. 6; Research Manager I - Economic/Financial, class code 5733, schematic code number LQ 51, excluded as management at p. B-26;
4. pp. 6-7; Prog. Administrator I, class code 9788, schematic code number XG 45, employee name Marlys J. Anderson, stipulated as included in Unit 19; the Board accepts the perfected stipulation to this effect filed by the parties on February 13, 1981, and therefore deletes reference to the position in Unit I at Appendix F, p. F-15.

D. VOTER ELIGIBILITY

Pursuant to the Board's directive dated December 11,

1980, the Board has received and considered the arguments presented regarding voter eligibility of employees in multiple job positions. It is determined that those employees who hold positions as rank and file employees and also primary positions as supervisors, managers, or confidential employees are not eligible to vote in any unit election including the unit in which the rank and file position is placed. It is further concluded that those employees who hold rank and file positions in more than one unit shall be permitted to vote only in that unit in which their primary position falls. *3 However, they shall be members of both units.

E. NEW CLASSIFICATIONS AND POSITIONS

The regional director is directed to examine new classifications and positions created by SPB not covered by the Board's decision and to place such classes in the appropriate units in accordance with PERB Decision No. 110c-S.

F. HOME ADDRESSES

The Board accepts the stipulations submitted regarding the nonrelease of home addresses of certain employees pursuant to PERB rule 32726(a) *4 and orders the regional director to incorporate those stipulations into the directed election order.

III. CLASSIFICATION OF POSITIONS

In PERB Decision No. 110c-S (12/31/80), the Board indicated that certain classifications as listed in Appendix C were left unresolved pending further future action by the Board. These unresolved classifications affected Units 7, 12, 13 and 15. Subsequent to the Board's decision, the parties involved in the Unit 15 dispute entered into a stipulation that Laundry Supervisor I (DG 30), be excluded from the unit. The Board accepts this stipulation and directs that this classification be listed among the exclusions.

The parties further stipulated that the Supervising Cook II, Correctional Facility (DJ 15), employed at the Department of Corrections, be excluded from the unit. The Board is unwilling to accept this stipulation because it purports to split this classification into employees working at the Department of Corrections and the California Youth Authority absent any facts in the stipulation or any record evidence to support this division. The Board has therefore considered this entire classification among the other unresolved classifications discussed infra.

The parties also stipulated that Supervising Cook I, Correctional Facility (DJ 25), employed at the Department of Corrections, be included in Unit 15. Contrary to the split

classification as to the Supervising Cook II, CF, the record is replete with evidence indicating that the classification of Supervising Cook I, CF, be split between Department of Corrections and Youth Authority personnel. The Board therefore accepts the parties' stipulation to include the Supervising Cook I, CF, employed at the Department of Corrections, in the unit. The Board does address the classification as to Youth Authority personnel as an unresolved classification infra.

The members' decisions on the reserved classifications are included infra as follows:

Unit 7

State Police Sergeants/Line Sergeants (VC 30)

Majority opinion of Gluck and Jaeger at page
Dissenting opinion of Moore at page

Unit 12

Plumber Supervisor (PT 10), Electrician Supervisor (PS 10),
Painter Supervisor (PQ 60), Carpenter Supervisor (PN 10)

Majority opinion of Gluck and Jaeger at page
Dissenting opinion of Moore at page

Highway Electrical Supervisor (QO 20)

Opinion of Gluck, Jaeger and Moore at page

Toll Bridge Service and Maintenance Supervisor I (PF 80)

Majority opinion of Gluck and Jaeger at page
Dissenting opinion of Moore at page

Unit 13

Supervisor, Tunnels and Tubes (QC 60)

Majority opinion of Jaeger and Moore at page
Dissenting opinion of Gluck at page

Chief Engineer I (QC 20)

Majority opinion of Gluck and Jaeger at page
Dissenting opinion of Moore at page

Unit 15

Supervising Cook II, CF, (DJ 15)

Majority opinion of Jaeger and Moore at page
Dissenting opinion of Gluck at page

Supervising Cook I (DJ 25) CYA

Majority opinion of Gluck and Jaeger at page
Dissenting opinion of Moore at page

UNIT 7

Line Sergeants (VC 30) [22 employees]

The Line Sergeants are the watch commanders in San Francisco, Sacramento, and Los Angeles where around-the-clock crews are needed for various duties. The testimony of the two Line Sergeants called revealed that they perform the work of their subordinates 75-80 percent of the time. They have no authority to hire, transfer, suspend, lay off or promote subordinates. The first step of the grievance procedure is the Captain or Lieutenant above the Line Sergeant. Assignments are determined by seniority, with modifications in this system being approved by the Lieutenant.

In arguing for exclusion of the Line Sergeants, GOER relies on the fact that they complete personnel incident reports (PIRs) which assertedly is tantamount to the power to discipline or reward. However, testimony of the Sergeants reveals that they use the PIRs as a fact sheet to document incidents that could eventually result in a reprimand or commendation. Generally, the Sergeants do not fill out PIRs without first consulting with their supervisors. Even after its completion, the PIR goes through several levels of review before any action is taken. In light of these facts, including that Line Sergeants do not exercise judgment independent of their supervisors even in completing PIRs, it cannot be said that they possess the power to reward or discipline through this function.

Because of the significant proportion of time spent engaged in the work of subordinates and the lack of supervisory or independent judgment required by the statute, Line Sergeants are included in the unit.

UNIT 12

Craft Supervisor

Four craft classifications are at issue: Electrician Supervisor (PS 10), Carpenter Supervisor (PN 10), Painter Supervisor (PQ 60), and Plumber Supervisor (PT 10). All are employed in State hospitals or in the Department of General Services. Similar classifications employed by the California Youth Authority (CYA) and Department of Corrections are

admitted by GOER to be rank-and-file. There was no evidence indicating how the CYA/Department of Corrections jobs differed from those in question here.

Electrician Supervisor (PS 10)

There are approximately 11 Electrician Supervisors (ES) who work with crews of five to eight Electricians. The ES do not perform the work of the Electricians. However, we find that they are not supervisors within the meaning of the Act.

Generally, ES are responsible for overseeing the electrical work performed at the respective facilities. They also inspect work done by contractors, prepare cost estimates, perform liaison work with the Office of the State Architect, and complete certain paperwork.

The ES participate in hiring interviews for Electricians, but their recommendations are not necessarily effective. The Chief of Plant Operations (CPO), who supervises the ES, has the final authority and discretion to hire. Work is routinely assigned to Electricians on the basis of work orders prepared by a clerical worker. Job priorities are set by the CPO which the ES follow in assigning work. The ES can authorize overtime in emergencies, but there have been occasions when such decisions have been overruled by the CPO. The determination of who will work emergency overtime is by rotation, referred to as the "call-down" procedure.

The ES have no authority to adjust grievances of crew members, although they may attempt to settle informal conflicts over vacation schedules and other minor complaints. The departmental grievance procedure begins with the CPO. The role of the ES in the disciplinary process is limited. They do not initiate disciplinary action, but merely gather the information which enables the CPO to make a determination. The ES have no authority to determine the appropriate disciplinary action.

The Electrician Supervisor is included in the unit.

Carpenter Supervisor (PN 10) [16 employees]

The Carpenter Supervisors' (CS) alleged supervisory functions are essentially ministerial in nature and lack the requisite element of independent judgment required to cause their exclusion from the unit.

The CS sit on hiring interview panels with the Supervisor of the Building Trades, the CS's immediate supervisor. Before anyone is hired, the two must agree. No evidence was offered as to the procedure following a disagreement.

The CS may resolve informal complaints by crew members concerning shift times, assignments or safety, but the formal grievance process begins with a written complaint filed with the Building Manager. The CS are responsible for gathering facts necessary for grievance processing and disciplinary

actions, but the record is silent as to whether they are consulted by the building manager concerning the resolution of the grievance or possible discipline to be imposed.

The Carpenter Supervisor is included in the unit.

Painter Supervisor (PQ 60) [11 employees]

The Painter Supervisors (PS) are responsible for seeing that work orders are filled by the crews under their direction. They can adjust work schedules according to the needs of the State facilities to be painted. They may request authorization to work crews overtime, but the building manager must approve these requests.

The PS may take corrective action related to on-the-job quality control, that is, the correction of work errors, but the PS involvement in disciplinary matters is limited to formal counseling and requests that punitive action be initiated. Such a request is subject to review and approval by the PS's supervisor.

The PS's authority to resolve grievances is limited to such matters as complaints about the quality of paint, equipment or job hazards. There is no evidence that the PS have the authority to resolve formal grievances or make effective recommendations in such matters.

The Painter Supervisor is included in the unit.

Plumber Supervisor (PT 10) [6 employees]

As with the three other craft supervisors, the weight of the evidence indicates that the Plumber Supervisors (PS) do not exercise independent judgment in assigning work, adjusting grievances, disciplining, transferring or laying off, hiring, or other supervisory functions. According to the PS who testified, he has no authority to hire; rather, he conducts initial screening interviews to determine the technical expertise of the applicants. His supervisor, the CPO then interviews them and makes the final decision on hiring.

The PS involvement in discipline is limited to counseling with employees who pose a problem and documenting their actions in the form of counseling memos. If this procedure does not correct the problem, it is the CPO who initiates punitive action.

To the extent the PSs adjust informal grievances, it is pursuant to consultation with the CPO. The PS have never sat on a grievance panel.

In making work assignments, the PSs follow a priority system established by the CPO. The PSs merely apply the existing criteria to the daily plumbing problems. The PS may call back employees for weekend or emergency work, according to a rotation schedule, employing no discretion in deciding which employee to call back.

In sum, the PS personnel activities are subject to review by their supervisors, and they exercise no independent judgment with regard to the enumerated supervisory functions.

The Plumber Supervisor is included in the unit.

Highway Electrical Supervisor (QO 20) (HES)

There are 27 positions within this classification. The HES has a crew of between four and thirteen employees, typically ten people assigned to her/him. The crew is comprised of Highway Electricians I and II, and Highway Electrical Technicians. These crews are responsible for the maintenance and repair of electrical apparatus located on State highways.

The evidence indicates that the HES will make assignments to subordinates and thereafter inspect their work to ensure that it is properly performed. When notified of an emergency, a HES will exercise her/his independent judgment in deciding how many employees will be called back to work. Thus the HES assigns and directs work.

The evidence also indicates that the HES sits in on hiring and promotional panels for subordinate employees, and that their recommendations as to who should be hired or promoted are given great weight. The HES adjusts grievances of subordinate employees. The HES also counsels employees regarding disciplinary problems. Further, the HES writes letters of commendation for excellent work, thereby rewarding employees.

A HES will only perform the work of her/his subordinates for training purposes or in case of an emergency.

However, located in the Caltrans' laboratory are HES(s) *5 who work on electrical equipment and have no subordinates. As these individual(s) cannot be a supervisor, a split class is created, and those HESs without subordinates are included in the unit.

As the HES(s) with subordinates exercise significant supervisory authority and do not perform duties substantially similar to their subordinates, the classification is excluded as supervisory.

Toll Bridge Service and Maintenance Supervisor I (PF 80)

There are a total of eight Toll Bridge Service and Maintenance Supervisor Is (hereafter TBSMS I): five are employed at the Oakland-San Francisco Bay Bridge, one at the Richmond-San Rafael Bridge, one at the Dumbarton Bridge, and one at the San Diego-Coronado Bridge. The five who work at the Bay Bridge are under the supervision of two Toll Bridge Service and Maintenance Supervisor IIs (hereafter SMS II) who, in turn, report to the assistant superintendent and the superintendent. There are no TBSMS IIs at the outlying bridges. However, there is no evidence that this fact affects the duties and

responsibilities of the three TBSMS Is who work at the outlying bridges.

On the Bay Bridge, there is a TBSMS I for each maintenance section -- steel erection (12 employees); structural and building maintenance (7 employees); building and maintenance and janitorial (16 employees) tow service and roadway maintenance (9 employees); bridge service, bicycle van operation and night coning section (9+ employees). The TBSMS Is work closely with the lead persons on the work crews. Their responsibilities and duties include requisitioning necessary equipment and material, preparing and posting work schedules, assigning work to the crews, and handling vacation requests. They may authorize overtime and sick leave according to preestablished departmental guidelines. The five TBSMS Is at the Bay Bridge play no role at all in the hiring process. The three from the outlying bridges sit in on interview panels, but there is no evidence as to how the final candidate for a job is selected and no evidence that the recommendations of the TBSMS Is are followed. The role of the TBSMS I in the formal grievance process is limited to collecting facts and information that is then referred to higher levels of management for independent review.

The Board finds that the employees in this classification are properly included in the unit. While they exercise some marginal direction over others, it is of a routine or clerical nature. They exercise no significant supervisory authority in that their recommendations are, without exception, made in consultation with or are subject to the independent review of higher levels of authority.

UNIT 13

Supervisor, Tunnels and Tubes (QC 60)

The Supervisor, Tunnels and Tubes (S,TT) class has eight (8) positions throughout the state. The S,TT oversees a crew of four to six subordinates in the maintenance and repair of tunnels and tubes within the state highway system.

The record establishes that the S,TT effectively recommends as to hiring and discipline. The S,TT makes work assignments based upon a preventative maintenance schedule and also upon problems turned up by the S,TT's periodic inspections. Where the S,TT finds work is being performed unsatisfactorily, the S,TT will take steps to see that the deficiency is corrected by the worker. The record also establishes that the S,TT does not do the work of subordinates.

We find that the S,TT has significant supervisory authority in the areas of hiring, discipline, assignment and direction of work. Furthermore, the S,TT does not perform duties substantially similar to those of his/her subordinates. Therefore, the S,TT class is properly excluded from the unit.

Chief Engineer I (QC 20)

The Chief Engineer I (CE I) is subordinate to the Building Manager I or the Chief of Plant who is, in turn, subordinate to the Building Manager II, or III. The CE I does not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, or effectively recommend such action. The Building Manager is the first line of supervision involved in the grievance procedure. The testimony indicates that the CE I is accountable to the Building Manager for the smooth running of the plant, but that the effective supervisory authority rests with the manager.

The CE I participation in the hiring process is limited to the screening of the technical qualifications of applicants appearing on a list provided by the personnel department. The Building Manager makes the actual hiring decision.

The CE I's authority to use independent judgment was not established Department policy, created at the level of Building Manager and above, controls the CE I's decisions. For example, when an emergency requires overtime work, the CE I can only request the stationary engineers to report. If they refuse to work, the CE I may be required to do the work. An "unreasonable" refusal to work would have to be referred to the Building Manager for action.

The CE I performs various general, nonsupervisory administrative functions. He prepares parts requisition forms for the signature of the Building Manager, reports on the various functions of the department, and accounts for the expenditures required. Vacation and sick leave procedures are predetermined by departmental policy and the CE I's involvement is purely ministerial.

The CE I oversees the assignment of work, but this responsibility does not entail the requisite independent judgment required by the Act. A preventative maintenance schedule is taken from a daily computer printout prepared by other employees, though certain other repair work may be assigned by the CE I to employees having specific expertise on the equipment or process.

The authority to discipline an employee who fails to work lies with the Building Manager, and while the CE I may recommend disciplinary action, his recommendations are not necessarily followed.

While the CE I undoubtedly possesses particular technical expertise and deals with more complex and difficult equipment and process problems, the record fails to support a finding he meets the statutory definition of supervisor. The CE I is therefore included in the unit.

UNIT 15

Supervising Cook II - Correctional Facility (DJ 15)

The Supervising Cook II - Correctional Facility (SC II-CF) class has twenty-six positions throughout the State. The SC II-CF oversees approximately eleven subordinate Supervising Cooks I - CF in the preparation, cooking, and serving of food at Department of Corrections and Youth Authority institutions.

The record shows that the SC II's - -CF recommendations as to hiring are accorded substantial weight. The SC II - CF makes shift assignments and authorizes overtime without prior approval. The SC II - CF directs subordinates as to how much food to prepare and when to begin preparation. The SC II - CF also develops work standards and inspects to see that work and safety standards are met.

The SC II - CF does hands-on work only about 10 percent of the time.

The record establishes that the SC II - CF has significant supervisory authority in the areas of hiring, assignment, and direction of work. Further, the SC II - CF does not perform duties substantially similar to those of his/her subordinates. Therefore, the SC II - CF is properly excluded from the unit as a supervisory class.

Supervising Cook I - Correctional Facility (DG 25) [158 employees]

Only the positions in this classification employed by the Youth Authority are in dispute. These employees oversee the work of six Cook IIs and various wards of the Authority who are not, of course, employees of the State.

The Supervising Cook I - CF (SC I - CF) performs the work of the cooks approximately 7 to 10 percent of their working time. The claimed basis for their exclusion as supervisors is their authority to assign work, participate in the resolution of grievances and the imposition of discipline. While they do assign work to crew members, they do so in accordance with specific standards established by their supervisor, the food administrator. The latter is also the first step of the formal grievance procedure and the authority of the SC I is limited to resolving informal complaints by crew members. The SC Is do not impose discipline, their function being limited to gathering information regarding personnel problems and forwarding this material to their superiors. They may make recommendations concerning discipline, but those recommendations are not always followed and the actual decision is made by some superior authority.

The record is insufficient to justify exclusion of the Supervising Cook I - Correctional Facility employed in the Youth Authority and they are therefore included in Unit 15.

ORDER

In accordance with the foregoing and in consideration of the entire record in this case, the Public Employment Relations Board hereby ORDERS that:

(1) The technical corrections delineated in Appendix A be incorporated into PERB Decision No. 110c-S (12/31/80) and that any future technical errors be presented to the Regional Director for appropriate action in accordance with this decision;

(2) The footnote 24 of PERB Decision No. 110c-S at page 41 be amended and reworded as indicated supra;

(3) The perfected stipulations contained in Appendix B and submitted in response to PERB Decision No. 110c-S be incorporated into that decision as directed supra;

(4) The perfected stipulations contained in Appendix C and submitted in response to PERB Decision No. 110c-S be incorporated into that decision as directed supra;

(5) The Hearing Officer's recommendations concerning Appendix F of PERB Decision No. 110c-S be incorporated into that decision as directed above and with the correction to those recommendations as set forth by the Board, supra;

(6) The voter eligibility of multiple position employees be accomplished in accordance with the Board's direction supra and that the regional director conduct the representation election in accordance therewith;

(7) The Regional Director examine new classifications and positions not considered by the Board in its decision and place such classifications and positions into the appropriate units in conformity with the Board's decision;

(8) The Regional Director's directed election order reflect the Board's acceptance of the stipulated exemptions to release of employee home addresses; and

(9) The classifications listed in Appendix C be excluded from representation units for the reasons stated in the foregoing decision.

PER CURIAM

Dissenting Opinion of Member Moore:

State Police Sergeant (VC 30) Line Sergeant

I disagree with my colleagues' decision to include within the bargaining unit the seventeen (17) Line Sergeant positions within the State Police Sergeant class. I find that the evidence establishes that Line Sergeants exercise significant supervisory authority which requires the use of independent judgment.

The record shows that Line Sergeants prepare personnel incident reports (PIRs) on their subordinates' job performance.

These PIRs may serve as written reprimands or may be the vehicle for further disciplinary action. PIRs may also be used for commendatory purposes. The majority asserts that PIRs are mere fact sheets requiring no independent judgment in preparation. On the contrary, the record shows that PIRs contain evaluative and directive language which indicates the use of independent judgment. The majority also points to the evidence that Line Sergeants would check with their superiors prior to preparing a PIR; however, this was to ensure that a subordinate had not been given conflicting orders or that there had not been some kind of an administrative error. Beyond this, not one of the many PIRs submitted into evidence reflected any subsequent changes by superiors.

Furthermore, Line Sergeants patrol the various beats of subordinates to ensure that subordinates are on their proper beats and to see if there are any problems. These on-site inspections can also result in a PIR being written up on a subordinate.

The majority also points to testimony that Line Sergeants perform the work of their subordinates 75-80 percent of the time. However, this testimony was based on the assumption of a common patrol function, and the above discussion indicates that Line Sergeant's patrol function is not at all similar to that of his/her subordinates in either its scope or purpose. Rather, it is for the purpose of checking on the people on patrol and ensuring that they are performing the job as required.

The record establishes that Line Sergeants have significant supervisory authority in the areas of discipline, reward, and direction of work. Furthermore, Line Sergeants do not perform duties substantially similar to those of their subordinates. As such, I dissent from the decision to include Line Sergeants within the unit.

Dissenting Opinion of Member Moore:

Craft Supervisors

I dissent from the majority's decision to include the Carpenter Supervisor, Electrician Supervisor, Painter Supervisor, and Plumber Supervisor. I would, with limited exceptions, exclude these classes as supervisory.

I find that the Carpenter, Electrician, Painter, and Plumber Supervisors are parallel classifications possessing the same quantum of authority. The only difference among the group is the technical knowledge of their specific craft and I will, therefore, deal with them under the collective title of Craft Supervisors.

The majority appears to place some emphasis on the fact that classifications similar to craft supervisors employed at

the California Youth Authority (CYA) and California Department of Corrections (CDC) are rank and file and that there was no evidence indicating how those CYA/CDC positions differed from those in dispute here. This Board's experience with other disputed classifications has shown that as a general rule classifications located within the CYA/CDC have differing levels of authority from classifications with the same titles located outside the CYA/CDC. *6 This, however, is not what I find most objectionable about the majority's use of a negative inference. A negative inference, besides being unacceptable under accepted rules of evidence, *7 ignores the legislative mandate that we look to the "individual, regardless of the job description or title," *8 and places an impermissible burden on the party seeking exclusion. The majority's opinion would now have us ignore the individuals involved and look to other classifications.

Further, this Board has decided that the party seeking to exclude a classification has the burden of proof on that classification. *9 The majority would now add to that burden and require the party seeking to exclude a classification also to prove that other similar classifications are properly included or excluded.

The Craft Supervisors typically supervise a crew of between four and eleven subordinate employees generally including a leadperson. They are employed at state hospitals and at the Department of General Services within their respective crafts. I find, contrary to the majority, that the evidence indicates that the Craft Supervisors schedule day-to-day activities and assign work to their subordinates from these schedules. The Craft Supervisors are authorized to and do schedule overtime for their subordinates. The Craft Supervisors inspect the work of their subordinates and direct them to make corrections where necessary. I therefore conclude that they assign and direct work. Further, there is evidence that Craft Supervisors have made effective recommendations on hiring and promotion and are able to accept or reject transfers into their crews.

Finally, Craft Supervisors do not perform duties substantially similar to those of their subordinates. They perform "hands-on" work only for training purposes or in case of an emergency.

Since the Craft Supervisors meet at least one criterion of supervisory status in that they use independent judgment in the assignment and direction of work, and since they do not perform duties substantially similar to their subordinates, I would exclude them as supervisory employees.

There is, however, a group among the Craft Supervisors whose duties almost exclusively consist of inspecting work performed by outside contractors. They are known by the sobriquet of Permit Coordinators. As these positions rarely have subordinates to supervise, I would include them in the

unit.

Minority Opinion of Member Moore:

Toll Bridge Service and Maintenance Supervisors I (PF 80)
(TBSMS I)

I dissent from the majority's decision to include the TBSMS I and would exclude them as they meet several of the supervisory criteria.

There are eight positions within this classification. The TBSMS I has a crew of between 12 and 24 employees assigned to her/him, usually including a lead worker. These crews are responsible for the maintenance and repair of bridge structures and for emergency services on state-owned toll bridges.

The majority concedes that the TBSMS I prepares work schedules and assigns work to subordinate employees yet concludes that this is marginal direction of a routine or clerical nature. I disagree with their characterization as the evidence clearly shows that the TBSMS I assigns work either directly to the crew or through the lead worker and thereafter inspects the work to see that it is properly done. The TBSMS therefore assigns and directs work.

I agree with the majority that five TBSMSs I play no role in the hiring process. However, the record is clear that the three TBSMS I on the outlying smaller bridges actually select the person to be hired. Further, all TBSMSs I make recommendations as to who should be promoted and these recommendations are given great weight. The TBSMS I can, therefore, effectively recommend as to promotions.

Further, the TBSMS I, on both large and small bridges, prepares performance evaluations of subordinates. These are reviewed but rarely changed by higher level supervision. The TBSMS I also counsels subordinate employees on their work performance and discipline problems. They make effective recommendations to the TBSMS II on discipline and effectively recommend to the TBSMS II whether a merit salary adjustment should be approved or denied for their subordinates.

A TBSMS I will only do the work of her/his subordinates for the purposes of training.

The majority finds that the TBSMS I does not participate in the grievance process, speaking in terms of "the formal grievance process" which in this instance is a written grievance. I agree that there is insufficient evidence on the record to conclude that they adjust grievances. However, I disagree with resting this conclusion on examining only whether they adjust written grievances. The statute speaks in terms of grievances *10and does not differentiate between written and oral. I, therefore, read the statute as directing the Board to

look to whether an individual adjusts grievances and not to whether those grievances are written or oral. *11 By this I do not mean to state that every oral complaint raises itself to the level of a grievance.

As the TBSMSs I exercise significant supervisory authority and do not perform duties which are substantially similar to those of their subordinates, I would exclude the classification as supervisory.

Minority Opinion of Member Moore:

Chief Engineer I (QC 20)

I disagree with my colleagues' decision to include the Chief Engineer I (CE I) class within the bargaining unit.

The record clearly establishes that the CE I has significant supervisory authority. The majority completely ignores testimony by witnesses for an employee organization which indicated that the CE I effectively recommends as to hiring and promotion. One employee organization witness testified that one of his principal jobs is to plan and assign work. I disagree with the majority's position that this primary job function was carried out without the requisite independent judgment. Furthermore, the evidence was unequivocal that the CE I inspects and instructs as to how work is to be done; and the CE I has authority to have work done over if it is not done to the CE I's satisfaction. This authority to have work done over goes beyond the mere exercise of technical expertise referred to by the majority, involves the use of independent judgment and amounts to direction of subordinate employees.

The evidence also establishes that the duties of the CE I are not similar to those of his/her subordinates.

Based on the foregoing, I find that the CE I has significant supervisory authority in the areas of hiring, promotion, assignment of work, and direction of work. Furthermore, there is no evidence to support a finding that the CE I has duties substantially similar to those of his/her subordinates. Therefore I dissent from the majority decision to include the CE I class within the bargaining unit.

Minority Opinion of Member Moore:

Supervising Cook I - Correctional Facility (DG 25)

I dissent from the majority opinion that the 36 Supervising Cook I - Correctional Facility (SC I - CF) positions in the Youth Authority should be included within the unit.

The record shows that the SC I - CF assigns work based on

meal priorities. Contrary to the majority opinion, I find that this indicates the use of independent judgment in the area of assignment. There was evidence that the SC I - CF on occasion denies merit salary adjustments. Such denials indicate that these functions are performed with the use of independent judgment and indicate the SC I - CF can reward or discipline. The SC I - CF inspects work and enforces work and safety standards. While such work and safety standards may be developed at higher levels, I do not find, as does the majority, that this negates the use of independent judgment in the inspection and enforcement functions.

I agree with the majority that the SC I - CF does not adjust grievances within the meaning of the Act. However, I take exception to the use of the term "formal grievance procedure." To the extent that this implies that only the adjustment of written grievances has significance under the Act, it is without support under the Act and contrary to the clear weight of authority. (See my dissent on the classification of Toll Bridge Service and Maintenance Supervisor I, supra.)

While the evidence on the substantial similarity in duties was sparse, it appears that the SC I - CF does hand-on work only for training purposes and during staff shortages.

The record establishes that the SC I - CF has significant supervisory authority in the areas of assignment, reward, discipline, and direction of work. Further, the SC I - CF does not perform duties substantially similar to those of his/her subordinates. Therefore, the SC I - CF should be excluded from the unit as a supervisory class.

Harry Gluck, Chairperson, dissenting:

I fail to find in the record that the State has met its burden of establishing the supervisory status of Supervising Cook II - Correctional Facilities (DJ 15) and Supervisor, Tunnels and Tubes (QC 60) and would include both classifications in the appropriate units.

*1 PERB rules are codified at California Administrative Code, Title 8, sections 31000 et seq.

*2 SEERA is codified at Government Code, section 3512 et seq.

*3 As to these multiple position employees, the primary position is that designated as the employee's full-time position or that designated as primary pursuant to the Personnel Transactions Manual 340.21.

*4 PERB Rule 32726(a) permits the Board to exempt the release of employee home addresses where the release of such "is likely to be harmful to the employees."

*5 Only one individual testified as to being in this position. If there are others similarly situated they are also included.

*6 PERB Decision No. 110c-S (12/31/80), Unit 12. Automotive Pool Manager I, CF, at p. 64.

GOER asserts in its brief that the testimony as to the APM I (Noncorrectional Automotive Pool Manager I classification) is equally applicable to the APM I, CF classification, however, GOER did not put any evidence in the record to support this assertion. Also, experience with other classifications indicates that, as often as not, there is a significant variation between the duties of a noncorrectional classification and its correctional counterpart. In some cases, the variation has been so great as to result in differing conclusions being reached as to the supervisory status of each classification.

*7 An inference does not follow from the nonexistence of a fact. See *People v. Stein* (1979) 94 Cal.App.3d 235, 156 Cal.Rptr. 299; *Trailer v. Thompson* (1970) 4 Cal.App.3d 278, 84 Cal.Rptr. 211.

*8 Section 3522.1 "Supervisory employee."

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees. (Emphasis added.)

*9 See, *In Re: The State Employer-Employee Act, Phase III, Unit Determination Proceeding* (10/18/79) PERB Order No. Ad-79-S.

*10 See note 7, supra.

*11 See generally *Berkeley Unified School District* (8/28/79) PERB Decision No. 101, 3 PERC 10112; *Warner Co. v. NLRB* (3rd Circuit 1966) 365 F2d 435, 63 LRRM 2189; *Earle M. Jorgensen Co.* (1979), 240 NLRB No. 186, 100 LRRM 1410.

APPEARANCES:

Allen Paul Goldstein, Deputy Director and Barbara Stuart, Chief Counsel for Governor's Office of Employee Relations; Robert K. Clifford for State

Personnel Board; Christine A. Bologna, Attorney, for California State Employees Association; Thomas E. Rankin, Attorney, for State Employees Trades Council, Local 1268, Liuna; Ray Tharp, for American Federation of State, County and Municipal Employees; Gary Robinson, for Union of American Physicians and Dentists; Pat Hallahan, State Coordinator, for State Employees International Union, AFL-CIO.

PROCEDURAL HISTORY

Pursuant to notice to all parties, a prehearing conference was conducted on January 14, 1981, and a formal hearing on January 22, 1981. Other than a few brief statements summarized herein, briefing and oral argument were waived by the parties and the issues submitted.

RECOMMENDATIONS

1-A All parties indicated that they were not arguing for any exclusions based on the fact that employees were "casual" as the National Labor Relations Board has interpreted that term.

There was also concern that "intermittent" in State service should not be confused with "intermittent" as interpreted by the National Labor Relations Board. Intermittent employees in State service are civil service employees whom no party would seek to exclude from coverage under SEERA.

The position of the parties is that certain positions are not within the definition of "State employee" under Government Code section 3513(c) because they are not civil service employees. To confuse matters somewhat, all parties indicated that they had done extensive research and could not define what is a civil service employee because there are too many exceptions. Thus, the record reflects criteria that civil service employees do have and non-civil service employees do not have, rather than a clear definition of what is a civil service employee.

Casual trades employees have no civil service employment status and no civil service due process rights and do not receive civil service benefits. Civil service employees receive the following benefits which are not received by casual trades employees: vacation, holidays, military leave, time off for jury duty, time off for voting, time off when subpoenaed as a court witness, time off for civil service examinations and employment interviews, health insurance, sick leave, workers' compensation insurance, unemployment insurance, retirement benefits, training expenses, career related training, moving expenses if required to move, uniform allowance (if appropriate), travel expenses, deferred compensation, leave of absence without pay, merit award suggestions, state

rehabilitation services and rest periods.

Because the casual trades employees do not enjoy the same rights in hire or on retention of employment and do not enjoy the same benefits of employment as do civil service employees, it is recommended that these classifications, beginning with Appendix F, page 20, schematic code CR 40, class code 1658, job description Radio Officer, through page F-28, schematic code QQ 70, class code 6931, job description Sound Equipment Technician (casual employment), be excluded from coverage under Government Code section 3513(c) because they are not civil service employees.

1-B Non-civil service employees: it is not required that they be notified of charges (which might result in punitive action) and they have no right of appeal. They do not take a civil service examination and are not appointed from a civil service appointment list. They cannot compete in promotional examinations.

They do not serve a probationary period, may not transfer to a civil service classification and do not receive special consideration during reduction in the work force. Civil service employees do enjoy the foregoing status in hire and tenure of employment.

Because the following list of classifications do not meet the criteria met by civil service employees in the hire and retention of employment, it is recommended that they be excluded from coverage under Government Code section 3513(c) because they are not civil service employees:

Appendix F
Page No.

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Schematic
Code

BS16

CY10
CY30

BR90
BS10
BS14

BS18

BS19

DB60

Class
Code

0999

1854
1860

0986
0987
0979

0997

0998

1991

Title

Environmental Education*
Instructor, Youth
Conservation Corps

Examination Proctor
Assistant Examination Proctor

State Park Aide (Seasonal)
Maintenance Aide (Seasonal)

Work Coordinator, Youth
Conservation Corps
Crew Leader, Youth
Conservation Corps
Crew Member, Youth
Conservation Corps

Pedestrian Crossing Guard

Unit

3

4
4

12
12
12

12

12

15

*The parties had failed to stipulate that this position should be excluded during phase III. On remand, that stipulation was entered on the record.

2. Duane D. Morford, by declaration, stated that the following classes are non-clerical and are involved in analytical/technical functions including operating and maintaining personnel programs such as civil service classification, pay, selection, training or appeal functions for the State Personnel Board:

SCHEMATIC CODE

KC 80
KC 90
KY 90
LE 16
LE 09
LE 08
LM 47
LZ 73
LC 30
OY 20

OY 18

LA 15

LA 20

LA 30

LA 35

LA 50

LA 70

LA 80

CLASS CODE

4801

4800

5142

5157

5161

5160

1364

5602

5197

6118

6119

5164

5165

5168

5183

5180

9020

8895

CIVIL SERVICE CLASS TITLE

Staff Services Manager II

Staff Services Manager I

Associate Personnel Analyst

Staff Services Analyst (General)

Personnel Technician II

Personnel Technician I
Associate Programmer Analyst
Editorial Technician
Training Officer I
Hearing Officer II, State Personnel
Board
Hearing Officer I, State Personnel
Board
Supervising Personnel Selection
Consultant, State Personnel Board
Personnel Selection Consultant,
State Personnel Board
Test Validation and Development
Specialist II
Test Validation and Development
Specialist I
Recruitment Representative
Recruitment Manager, State Personnel
Board
Expert Examiner

Based on the record, it is recommended that the employees at the SPB employed in the foregoing classifications be excluded from the coverage of SEERA because they are not "state employees" within the meaning of Government Code section 3513(c). 3. By way of cleaning up some detail, some classifications which were remanded in Appendix F because they come within those issues, have already been excluded as management or confidential elsewhere in the Board's decision:

Page

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Schematic

KC70

Excluded at P. B-16 (management)
LQ 51
Excluded at P. B-26 (management)
WR 15

Excluded at P. B-33 (management)
WR 83
Excluded at P. B-33 (confidential)
ZZ 00
Excluded at P. B-35 (management)
ZZ 20
Excluded at P. B-35 (management)
ZZ 60
Excluded at P. 35 (management)

Class

4802

5733

9509

9529

4305

4304

4302

Job Description

Staff Services Manager III

Research Manager I - Economic/Financial

Senior Consultant, Fair Employment and
Housing

Labor Relations Analyst

CEA V

CEA IV

CEA II

By way of technical correction, it is recommended that
the foregoing classifications remain excluded and be deleted

from the remand of Appendix F.

4.

Page

F-15

Schematic

XG 45

Class

9788

Job Description

Prog. Admn. I - D/Rehb.**

(employee name, Marlys J. Anderson)

**Off the record, it was indicated that this position was on loan to the State Personnel Board and had been returned to the Department of Rehabilitation. Phase II, Vol. 1, p. 16-19 indicates all these positions are with Department of Rehabilitation as does the job description.

This position is erroneously listed in Unit I in Appendix F Rehb. In fact, it belongs in Unit 19 and was stipulated as excluded during Phase III, Vol. 1, pp. 16-19, GOER Exhibit #2 by omission from the list of rank and file inclusions.

It is recommended that the parties be permitted to file a list of specific exclusions in this class because the stipulated inclusions do not permit a definitive determination to be made. Parties fail to file a full stipulation, it is recommended that this classification be included in unit 19. (Note Appendix E of the Board's order on Phase III.)

5.

Page

F-2

Schematic

Eb 42

Class

2287

Job Description

Teacher Elementary Education CF

(Position No. 590-626-2287-001, Employee: Ruth Flenay)

The evidence reflects that this teaching position is simply on loan to the SPB. All parties agree that this classification should be in rank and file Unit III. No party seeks to have his classification excluded on any basis.

I concur and recommend that this classification be placed in Unit III. It was apparently omitted from that unit due to technical oversight.

6.

Page

F-15

Schematic

LM 47

Class

1364

Job Description

Associate Programmer Analyst

(Position No. 590-504-1364-001 Employee: Hasson, Juda L.)

(Position No. 590-504-1364-701 Employee: Sieber, Ernest F.)

The state points out that one other position in this class was stipulated as confidential and is contained in the Board's order at page B-40 as a confidential position. CSEA argues that the position is not confidential and should be excluded as a non-clerical, technical or analytical SPB position, still subject to the George M. Brown Act.

Since the stipulation apparently covered one specific position only, there is no basis for sweeping these two positions within the stipulation. Therefore, I recommend that this position be excluded pursuant to Government Code section 3513(c) as indicated under part 2 above.

7. The union of Physicians and Dentists made oral argument on the record regarding voter eligibility for intermittent employees. No recommendation is made regarding this argument because it is beyond the scope of the remand.

The foregoing recommendations are forwarded to the Board itself simultaneously with service on the parties hereto. The parties have until 5:00 p.m. on February 13, 1981 to file any arguments they wish to make with the Board itself at 923 12th Street, Sacramento, CA 95814 together with a proof of service

on all other parties hereto.

Pursuant to part 4 on p. 7, it is recommended that the parties be permitted to file a proper stipulation of exclusions regarding schematic code XG 45, class 9788, job description Prog. Admin. I-D/Rehb. Unless otherwise notified by the Board itself, this stipulation should be filed within the time permitted to file additional argument above.