

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of) Case No. LA-PC-1001
) LA-PC-1002
Unit Determination for Employees) LA-PC-1003
of the California State University) LA-RR-1004
and Colleges Pursuant to Chapter 744) LA-RR-1005
of the Statutes of 1978 (Higher)
Education Employer-Employee Relations) PERB Decision No. 176-H
Act).)
) November 17, 1981

Appearances: Patrick Hallahan, Paul Nawrocki and Carol Winston for College and University Service Employees, SEIU, AFL-CIO; Thomas E. Rankin, Attorney, and Fred Lowe for State Employees Trades Council, Local 1268, LIUNA, AFL-CIO; John D. Mickus, Robert W. Feinstein and Christine A. Bologna, Attorneys for California State Employees Association; Henry R. Fenton and Carol A. Robertson, Attorneys (Levy & Goldman) for International Union of Operating Engineers, Local 501; and Jaffe D. Dickerson and Barbara E. Miller, Attorneys for California State University and Colleges.

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

I.

INTRODUCTION

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

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

Board). Its terms extend the opportunity for collective negotiations to, among others, the California State University and Colleges (hereafter CSUC) and CSUC's employees.² As an initial step in the representational process, PERB has authority to determine the appropriate representational units for employees of CSUC.³

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

Based on the evidence and the briefs submitted by the parties, as well as the hearing officer's recommendations, the Board has determined that the following units are appropriate:

Unit 5 - Operations-Support Services

Unit 6 - Skilled Crafts

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

³Subsection 3563(a).

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

The specific composition of these units is discussed infra in Part III of this decision.

Exclusionary issues were raised by the parties with respect to alleged supervisory and/or managerial status of several classifications.⁵ We have considered the contentions raised by the parties in this regard and, except for the classifications specifically addressed and excluded by us, infra, have determined, upon review of the record and the hearing officer's discussion, that the disputed classifications were properly included in one or the other of the respective units.

II.

UNIT CRITERIA

The Legislature mandated that the Board consider various criteria in determining an appropriate unit of employees for purposes of meeting and conferring under provisions of the HEERA. Those criteria are set forth in section 3579 of the Act which, in pertinent part, provides:

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

⁵The classifications to which the employer attributes supervisory and/or managerial status are the following: supervising groundworker I, supervising carpenter, supervising painter, supervising electrician, supervising plumber, supervising materials fabrication specialist, supervising refrigeration mechanic, chief engineer I and chief engineer II.

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

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

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

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

(5) The impact on the meet and confer relationship created by fragmentation

of employee groups or any proliferation of units among the employees of the employer.

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

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

(d) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a single, separate unit of representation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers. The single unit of representation shall include not less than all skilled crafts employees at a campus or at a Lawrence Laboratory.

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In structuring units of CSUC employees, we have examined this statutory directive and have sought to place employees with an internal and occupational community of interest in an appropriate unit. We have considered the effect various unit configurations would have on the meet and confer relationships in terms of both the employer's interest in efficient operation of the educational system and in terms of the employees'

interests in effective representation. While each statutory criterion was considered in light of the evidence before the Board, we stress, as we did in the unit determination decision rendered for state employees under the State Employer-Employee Relations act (hereafter SEERA),⁶

. . . that such unit determination criteria cannot be reviewed in isolation from one another; indeed, there is substantial interplay among the various criteria. Therefore, all of the factors involved in a given situation must be balanced against one another. The result of any such balancing process is that in a particular factual setting some criteria are emphasized over others while in a different setting the weight given the same criteria may be altered.

Subsection 3579(c) sets forth a rebuttable presumption that all employees within an "occupational group or groups" are to be included within a single representation unit. Since "occupational group" is nowhere defined in the Act, we attribute to those words their common meaning. In giving effect to subsection 3579(c), therefore, our judgments result from a review of the entire evidentiary record. We note in this regard that the employer organizes its personnel according to a system whereby each employment classification is assigned

⁶In Re: Unit Determination for the State of California (11/7/79) PERB Decision No. 110-S.

an "Occupational Index Reference" number and placed in an occupational grouping. The Act, however, contains no reference to this system; nor is there any other indication that the Legislature intended a reference to the employer's Occupational Index schematic in employing the "occupational group" language which appears in subsection 3579(c). Thus, while we found this system to be a useful tool for the purpose of our own discussions, we do not view it as definitive of the "occupational group" language of subsection 3579(c).

The Board has also considered and addressed herein various exclusionary issues based on the alleged managerial or supervisory status of certain classifications.⁷

Managerial employee is defined in subsection 3562(1), which reads:

"Managerial employee" means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participate in decisions with respect to courses, curriculum, personnel and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of such duties.

⁷Managerial employees are excluded from coverage under the Act in subsection 3562(f). Supervisory employees have limited rights as set forth in section 3580 et seq.

Subsection 3580.3 of the Act defines supervisory employees as follows:

"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. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties; provided, that with respect to the University of California and Hastings College of the Law, there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

The above-quoted statutory language essentially parallels the definitions of managerial and supervisory employees found in SEERA. We find no reason to depart from the Board's conclusions regarding exclusionary issues as set forth in In Re: Unit Determination for the State of California (12/31/80) PERB Decision No. 110c-S. Thus, we conclude that, with respect to the exclusionary issues raised by the parties to the instant

case, the burden of proof rests with the party asserting the claim that certain employees should be excluded from coverage. We have also applied the disjunctive interpretation of the statutory language requiring demonstration that an employee meet only one of the specified criteria for exclusion. We similarly reaffirm our interpretation of the language "substantially similar" duties and the "use of independent judgment" and, to the extent applicable to the higher education sphere, our interpretation of the enumerated exclusionary criteria.

Finally, the regional director has been instructed to examine new classifications and reclassifications made by CSUC subsequent to the close of the record in this case and to place such classes in the appropriate units only in accordance with this decision.

III.

UNITS

UNIT 5: OPERATIONS--SUPPORT SERVICES

The Board finds that a systemwide unit consisting of non-craft maintenance, custodial and grounds employees of the California State University and Colleges is appropriate. This unit consists of approximately 2200 employees.

Based on the record, the Board finds that the job classifications placed within this unit share a strong community of interest. Specifically, the Board finds a

community of interest with regard to the following areas:

1. Grounds and custodial personnel consists of both semi-skilled and unskilled workers whose tasks are functionally related in the accomplishment of a common goal--the maintenance of the campus physical environment.
2. With one exception, each of the occupational classifications in this unit has a common reporting line to, and in, campus plant operations departments.
3. There is transferability of skills among these job classifications as evidenced by movement and promotion of employees.
4. The career paths for the custodial and grounds employees lie primarily within plant operations departments.

In the Board's view, such commonality far outweighs differences such as: the type, complexity and experience required for different tools used within each classification; the state licensing requirement for the pest control and spray specialist (0739); or the additional skills required by the irrigation specialist (0735).

On the basis of the above, we conclude that an Operations-Support Services Unit, as recommended by the hearing officer, is appropriate.⁸

⁸The Board also notes that there is very little dispute among the petitioners as to the appropriateness of this unit, though we stress such harmony is not dispositive.

Inclusion - Unit 5

Warehouse Worker (1508)

The Board has concluded that the classification of warehouse worker (1508) appropriately belongs in the Operations-Support Services Unit.

There are approximately 47 incumbents within this classification throughout the CSUC system. Of these, approximately 24 work in plant operations departments while the remainder work in a centralized shipping and receiving area.

Unlike the other classifications included in the Operations-Support Services Unit, the warehouse worker normally does not report directly to the director of plant operations. Instead, those working in a warehouse located in the corporation yard of plant operations departments usually report directly to a shipping and receiving assistant in the central receiving area.

The Board finds that neither the bifurcation of work location nor the reporting line of the warehouse worker is a serious impediment to the inclusion of this classification within this unit.

As with other job classifications in the Operations-Support Services Unit, the warehouse worker is, essentially, an unskilled category and because of this there is opportunity for transfer into other unskilled job classifications in this

unit. Employees in this class primarily perform manual labor, involving the operation of powered and nonpowered equipment; stock clerk functions, such as checking invoices, are only incidental to these tasks.

Additionally, while the reporting line of the warehouse worker is not to the director of plant operations, as it is with the other included classifications, the warehouse worker does perform an integral function in receiving, checking, storing and delivering items ordered by and for the plant operations departments. Approximately half of the incumbents of this classification perform a vital job function for the plant operations departments and, as such, share a significant community of interest with those other job classifications in the unit.

Exclusion - Unit 5

Supervising Groundswoker I (0711)

The Board has concluded that the supervising groundswoker I (0711) is a supervisory classification and, as such, is excluded from any unit pursuant to section 3580 of HEERA.

There are approximately four incumbents in this classification throughout the CSUC system. Their primary function is to oversee the work of several crews of groundswokers, each of which is headed by a lead groundswoker.

The Board finds that the supervising groundswoker I exercises significant supervisory authority that is not simply clerical or ministerial in nature. S/he completes the performance evaluation of the four lead groundswokers, and reviews the evaluations they complete for the 19 employees under them. The record reflects that s/he has the authority to evaluate probationary employees, and that her/his recommendations on retention or rejection are effective. S/he can recommend that disciplinary action be taken against an employee under her/his direction, routinely documents incidents involving misconduct by employees in the form of a report and recommendation submitted to personnel management and, on occasion, calls mandatory meetings of the ground employees to discuss complaints regarding their conduct.

Such evidence indicates to the Board a sufficient use of independent judgment in performing supervisory functions. It is the exercise of such independent judgment which is indicative of supervisory status.

UNIT 6: SKILLED CRAFTS

The Board finds that a unit consisting of all skilled craftworkers employed by the California State University and Colleges is appropriate. The unit consists of approximately 790 employees.

Subsection 3579(d), set forth in full above, provides that ". . . an appropriate group of skilled crafts employees shall have the right to be a single, separate unit of representation," and that this right exists "[n]otwithstanding the foregoing provisions of [section 3579], or any other provision of law. . . ." Two parties to the instant case filed petitions with this Board, each of which purported to describe such a unit of skilled crafts employees. One petition requested a unit composed of all skilled craftworkers employed by CSUC throughout the 19-campus system;⁹ the other advocated the appropriateness of a unit composed of all skilled craftworkers employed at CSUC's Bakersfield campus.¹⁰

Subsection 3579(d) sets forth only one restriction in connection with the right of skilled crafts employees to a separate representation unit, to wit, that such a unit must include ". . . not less than all skilled crafts employees at a campus. . . ." Inasmuch as both petitioned-for units satisfy the section's requirements, they are both appropriate. Nevertheless, they are mutually inconsistent; they cannot coexist. Faced with the necessity of making a choice,

⁹This was petition LA-PC-1003, filed by State Employees Trades Council, Local 1268, LIUNA, AFL-CIO.

¹⁰This was petition LA-RR-1005, filed by International Union of Operating Engineers, Local 501, AFL-CIO.

therefore, it is our determination that in this instance a single, systemwide unit of CSUC's skilled crafts employees is more appropriate than a single campus unit.

The question in the instant case is whether the 11 skilled crafts employees at CSUC's Bakersfield campus should be separated for purposes of collective negotiating from the body of 790 skilled craftworkers employed by CSUC, or whether that body should negotiate with the employer as a single unit. In making this determination, we are not tied to a mechanical application of the statutory criteria which precede subsection 3579(d), since that subsection expressly provides that the right of skilled crafts employees to form a separate unit is not to be limited by those criteria. Nevertheless, it remains our responsibility to give expression to the Legislature's intent in enacting HEERA. In this regard we note first that the Legislature has manifestly evidenced a concern for the effects that a multiplicity of units might have on the meet and confer relationships: we are expressly directed by subsection 3579(a)(2), and again by subsection 3579(a)(4), to consider the numerical size of a proposed unit; subsection 3579(a)(5) cautions us to consider the impact of any proliferation of units; and the presumption expressed in subsection 3579(c) against the splitting of occupational groups also speaks to the Legislature's concern that a multiplicity of units should be avoided.

So, too, section 3579 amply reflects a legislative concern as to the effects that a multiplicity of units might have on the operations of the employer: subsection 3579(a) (3) expresses a general concern about the effects of a proposed unit on the employer; and subsection 3579(a) (4) specifically directs our attention to the relationship between the numerical size of units and the ability of the employer to operate. The right of CSUC's employees to effective representation is also an express concern of the Legislature (see subsection 3579 (a) (4)).

Based on the evidence contained in the record, in our judgment, a single unit composed of the 790 skilled craftworkers employed by CSUC would result in a more appropriate meet and confer relationship than would the instant alternative. So, too, evidence of the employer's extensively centralized system of administration indicates that a systemwide unit of crafts employees would further the efficient operations of the employer. The alternative in this instance could adversely affect the decision-making processes of this higher education employer in connection with its mission to serve students and the public. We have an additional concern that a unit of 11 employees, in a system where the authority to make decisions affecting wages, benefits, and other terms and condition of employment of these employees is centralized in a systemwide administration in Long Beach, would adversely affect

the right of these employees to effective representation. Were there a significant history of campus-level representation for the Bakersfield crafts employees, the foregoing factors might be less persuasive. However, the record contains no evidence of such a history.

Exclusions - Unit 6

Chief Engineer II (6695), Chief Engineer I (6698)

The Board finds that the job classifications of chief engineer II (6695) and chief engineer I (6698) are supervisory and as such are excluded from the Skilled Crafts Unit.

The chief engineer II and the chief engineer I are essentially similar positions with regard to duties and responsibilities, the only difference being that the chief engineer II is found on the larger CSUC campuses whereas her/his counterpart, the chief engineer I, is located on the smaller CSUC campuses.

Incumbents of these positions have the overall responsibility for the operation of the engineering section of a campus plant operations department. They independently prepare policies and procedures in furtherance of their duties based upon broad administrative policies established through the director of plant operations. In implementing these policies, they have the authority to hire, assign and direct work, approve overtime and leave, transfer, discipline and informally adjust grievances of subordinate employees.

Possession of such prescribed authority is an indicator of supervisory duties. In Re: Unit Determination for the State of California, supra. On this basis, the Board finds that these two classifications are supervisory and, as such, are to be excluded from the unit. This decision is based upon the Board's review of the evidentiary record and the reasoning contained in the hearing officer's recommendation.

IV.

CLASSIFICATIONS NOT RECOMMENDED FOR UNITING

The Board, in agreement with the hearing officer, finds that the classifications not recommended for uniting lack a significant community of interest with classifications in either of the two units we have herein approved. We find further that they do not share a sufficient community of interest with any of the units for which we directed an election in our decision on professional employees (Unit Determination for Employees of the California State University and Colleges (9/22/81), PERB Decision No. 173-H) to warrant placing them in those units. We also find that the evidence was insufficient to demonstrate that these classifications constitute an appropriate residual unit.

V.

REQUEST TO AMEND PETITION LA-RR-1004

The Board has considered the entire record in connection with the request by the California State Employees Association

to amend their petition LA-RR-1004 by deleting 11 classifications therefrom.¹¹ Finding no reason why these 11 classifications should remain a part of that petition, the Board approves the request.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

(1) The following units are appropriate for the purpose of meeting and conferring in good faith pursuant to Government Code section 3560 et seq.

Unit 5: Operations--Support Services Unit

Unit 6: Skilled Crafts Unit

The inclusions in the above-described units, by job classification, and the exclusions therefrom are set forth in Appendix A, attached hereto;

(2) The regional director shall examine new classifications and re-classifications established subsequent to the close of the record in this case and place them in appropriate units in accordance with the Board's decision.

(3) Any technical errors in this ORDER shall be presented to the regional director who shall take appropriate action thereon in accordance with this decision.

¹¹These 11 classifications are set forth in Appendix B, attached hereto.

The Board further ORDERS that:

The request by the California State Employees Association to amend petition LA-RR-1004 is approved. The 11 classifications which are the subject of that request are set forth in Appendix B, attached hereto.

The executive director is hereby directed to proceed under California Administrative Code, title 8, part 3, division 4.

PER CURIAM

Harry Gluck, Chairperson, concurring:

I note, with respect to the establishment of the University-wide skilled crafts unit, that the record contains considerable factual material intended to supplement the statutory presumption of appropriateness (subsection 3579(d), supra). While not all of this material is convincing, it is sufficient in sum to tip the balance where the competing petition for a campus unit relies solely on the presumption.

Harry Gluck, Chairperson

APPENDIX A

Unit 5 - Operations-Support Services

Shall INCLUDE:

<u>Class Code</u>	<u>Class Title</u>
0726	Lead Groundswoker
0731	Groundswoker
0735	Irrigation Specialist
0739	Pest Control and Spray Specialist
0743	Gardener
0745	Gardening Specialist
0746	Tree Trimmer I
0748	Tree Trimmer II
1508	Warehouse Worker
2010	Custodian
2013	Window Cleaner
2015	Lead Custodian
6223	Laborer
6381	Truck Driver
6385	Farm Equipment Operator
6390	Tractor Operator-Laborer
6393	Automotive Equipment Operator I

Shall EXCLUDE:

All employees found to be managerial, supervisory or confidential within the meaning of Government Code section 3560 et seq., including:

<u>Class Code</u>	<u>Class Title</u>
0711	Supervising Groundswoker I

Unit 6 - Skilled Crafts

Shall INCLUDE:

<u>Class Code</u>	<u>Class Title</u>
6212	Skilled Laborer
6215	Building Maintenance Worker
6474	Supervising Carpenter
6475	Carpenter II
6476	Carpenter I
6524	Supervising Painter
6525	Painter II
6526	Painter I
6532	Electrician II
6533	Electrician I
6534	Supervising Electrician
6547	Supervising Plumber
6548	Plumber II
6549	Plumber I
6575	Blacksmith
6583	Materials Fabrication Specialist
6584	Sheet Metal Worker
6587	Supervising Materials Fabrication Specialist
6596	Fusion Welder
6616	Mason
6642	Locksmith I
6643	Locksmith II
6699	Refrigeration Mechanic
6700	Supervising Building Service Engineer
6702	Building Service Engineer (formerly Stationary Engineer (6701))
6703	Operating Engineer
6805	Machinist
6834	Heavy Equipment Mechanic
6837	Mechanics Helper
6851	Automobile Mechanic
6852	Lead Automotive and Equipment Mechanic
6940	Maintenance Mechanic

Shall EXCLUDE:

All employees found to be managerial, supervisory or confidential within the meaning of Government Code section 3560 et seq., including:

<u>Class Code</u>	<u>Class Title</u>
6695	Chief Engineer II
6698	Chief Engineer I

APPENDIX B

The 11 classifications which are the subject of CSEA's request to amend petition LA-RR-1004 are:

<u>Class Code</u>	<u>Class Title</u>
1450	Duplicating Machine Operator I
1464	Duplicating Machine Supervisor I
1466	Duplicating Machine Operator II, Offset
1467	Duplicating Machine Operator II, Direct Impression
1471	Reproduction Processes Supervisor
1472	Reproduction Processes Assistant
2899	Book Repairer
3022	Drafting Aid
3023	Drafting Technician I
3024	Drafting Technician II
3025	Delineator