



STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
)	
UNIT DETERMINATION FOR TECHNICAL)	Case Nos.
EMPLOYEES, LAWRENCE LIVERMORE)	SF-RR-1002-H et al.
NATIONAL LABORATORY, OF THE)	
UNIVERSITY OF CALIFORNIA)	PERB Decision No. 241b-H
PURSUANT TO CHAPTER 744)	
OF THE STATUTES OF 1978)	March 8, 1983
(HIGHER EDUCATION EMPLOYER-)	
EMPLOYEE RELATIONS ACT))	

Appearances: Philip E. Callis, Attorney for California State Employees Association; Patrick J. Szymanski, Attorney (Beeson, Tayer, Kovach & Silbert) for Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70; Jerrold C. Schaefer and Judith Droz Keyes, Attorneys (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

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

DECISION

On September 30, 1982, the Public Employment Relations Board (PERB or Board) issued a decision¹ under the Higher

*Chairperson Gluck did not participate in this decision.

¹Unit Determination for Technical Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/30/82) PERB Decision No. 241-H. See also the decision concerning requests for reconsideration and judicial review, Unit Determination for Technical Employees; Clerical Employees; Service Employees; Professional Scientists and Engineers, Lawrence Livermore National Laboratory; Professional Librarians; and Professional Patient Care Employees of the University of California; Pursuant to Chapter 744 of the

Education Employer-Employee Relations Act (HEERA)² creating three units of technical employees at the University of California (UC). The units consist of Lawrence Livermore National Laboratory (LLNL) technical employees, systemwide technical employees, and patient care technical employees. A hearing was held to determine whether certain employees and classifications in the LLNL technical unit are supervisory or confidential.

In the LLNL technical unit, the parties have stipulated to the exclusion of employee Barbara McDonald, Computer Support Technologist (Class Code 525.2), as supervisory. This stipulation is approved by the Board based upon the facts presented by the parties in their stipulation dated August 25, 1982.³

Statutes of 1978 (Higher Education Employer-Employee Relations Act) (2/4/83) PERB Decision Nos. 241a-H and 244a-H through 248a-H.

²The HEERA is codified at Government Code section 3560 et seq. All statutory references hereafter are to the Government Code unless otherwise indicated.

³The Board does not specifically designate as supervisory the employee the parties have agreed to exclude. In the State Employer-Employee Relations Act, Phase III, Unit Determination Proceeding (10/18/79) PERB Order No. Ad-79-S, the Board stated that it:

. . . views the focus of the Phase III unit determination proceedings to be a determination of those rank and file employees who are to be included in the designated appropriate units. However, the burden is on the . . . party which may seek

The remaining exclusionary issues in the LLNL technical employees unit are decided herein.

DISCUSSION

The terms "supervisory employee" and "confidential employee" are defined in subsection 3580.3⁴ and subsection

to exclude employees from units because of alleged managerial, supervisory or confidential status—to affirmatively justify their exclusion. This can be done by showing evidence of actual job requirements which would disqualify the subject employees from placement in representation units irrespective of which exclusionary category those employees may fit.

Thus, the Board only approves the exclusion of the employee from the unit, and not the specific basis for the exclusion.

⁴Section 3580.3 provides:

"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

3562(e),⁵ respectively.⁶ The statutory language of these sections essentially parallels the definitions of supervisory and confidential employees found in the State Employer-Employee Relations Act (SEERA).⁷ In resolving the exclusionary issues

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.

⁵Subsection 3562(e) provides:

"Confidential employee" means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of such management positions.

⁶Confidential employees are excluded from coverage under HEERA in subsection 3562(f). Supervisory employees have limited rights as set forth in section 3580 et seq.

⁷The SEERA is codified at section 3512 et seq.

"Supervisory employee", as defined in section 3522.1 of SEERA, does not contain the department chairperson language of HEERA. "Confidential employee," as defined in subsection 3513(f) of SEERA, refers to individuals who develop or present management positions with respect to "employer-employee relations" as compared to "meeting and conferring."

Section 3522.1 provides:

"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,

in dispute, we find no reason to depart from the Board's conclusions regarding exclusionary issues set forth in Unit Determination for the State of California Pursuant to Chapter 1159 of the Statutes of 1977 (State Employer-Employee Relations Act) (12/31/80) PERB Decision No. 110c-S.8 Thus, we conclude that the burden of proving an exclusionary claim rests with the party asserting it.⁹ Stipulations of fact submitted by the parties are accepted as conclusive. See additionally the

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.

Subsection 3513(f) provides:

"Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

⁸Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/22/81) PERB Decision No. 173-H and (11/17/81) PERB Decision No. 176-H.

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

detailed discussion regarding the definition of supervisory employee and the functions of the laboratory in Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California Pursuant to Chapter 744 of Statutes of 1978 (Higher Education Employer-Employee Relations Act) (3/8/83) PERB Decision No. 246b-H, at p. 8 et seq.

Confidential Employees

The Board has stated that:

. . . the employer, in order to fulfill its statutory role in its employer-employee relations, must be assured of the undivided loyalty of a nucleus of staff designated as "confidential employees."¹⁰

Subsection 3562(e) of HEERA provides that a confidential employee is one who is required to develop or present management positions with respect to "meeting and conferring." This term, like the term "employer-employee relations" in subsection 3513(f) of SEERA, includes, at the least, the processing of employee grievances as well as employer-employee

¹⁰Sierra Sands Unified School District (10/14/76) EERB Decision No. 2~, at p. 3~. That case was decided under subsection 3540.1(c) of the EERA, which provides:

"Confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

negotiations.¹¹ The frequency with which an employee has access to or possesses information of a confidential nature is not controlling, if it is in the regular course of the employee's duties and is more than a happenstance.¹² However, more than a fraction of the employee's time must be spent on confidential matters.¹³

DISPUTED SUPERVISORY POSITIONS

Robert Butcher - Lead Operator-Printing Services (Class Code 584.3)

Several of the disputed employees in the LLNL technical unit work in the Graphics Division of the Technical Information Department. Robert C. Berlo, the manager of the graphics division, testified regarding its organizational structure. Within the division, there are three groups: the photography group including camera operations section and the photo lab section, the printing plant group and the multi-media group.

Robert Butcher is the lead operator in the printing plant group. He and eight other printing plant employees are

¹¹Fremont Unified School District (12/16/76) EERB Decision No. 6, at p. 11; Marin Community College District (6/26/78) PERB Decision No. 55, at p. 20; Rio Hondo Community College District (12/28/82) PERB Decision No. 272.

¹²San Rafael City Schools (10/3/77) EERB Decision No. 32, at p. 3.

¹³Campbell Union High School District (8/17/78) PERB Decision No. 66, at pp. 3-4.

supervised by Cliff Hilts, who is the printing plant supervisor.¹⁴ Berlo is Hilts' supervisor.

Berlo testified that Hilts and Butcher would consult with each other before making hiring, firing or disciplinary recommendations to Berlo. However, he also testified that no such actions have been taken as long as Hilts and Butcher have worked together, and that Hilts' authority would override Butcher's in any event.

Butcher assigns work to the printing plant employees on the basis of time constraints imposed by the customer making the order and the type of machine required to perform the work. He also oversees the quality of the finished product.

Butcher determines overtime according to the time required for an individual project and the willingness of the customer to pay the overtime premium. Overtime is allotted on a voluntary basis with the only restriction being that no individual can work more than 16 hours a week overtime. Butcher will fill in on any machine or operation in the print plant if someone is missing or the order requires extra labor. The record does not indicate the extent to which Butcher performs substantially the same duties as the other printing plant employees.

¹⁴Hilts' supervisory status is not in question.

Butcher may discuss evaluations with Hilt but they are primarily the responsibility of the print plant supervisor who both writes and signs them.

This record indicates that Robert Butcher's exercise of assignment, work direction and quality control functions is based upon his printing craft expertise and experience as lead operator. He exercises control solely over work processes. His administrative functions are routine and clerical. Butcher's participation in personnel decisions made by Hilt and higher supervisors do not involve the exercise of independent judgment, nor do they create a serious potential for a conflict of interest with bargaining unit members.

Based on these facts and discussion, the Board finds that Robert Butcher, Lead Operator-Printing Services, is not a supervisor. He is therefore included in the LLNL technical unit.

Dick Rau, Jerry Wood, Jack Austin, Bennie Walker, Floyd Rupp - Photographic Specialists (Class Code 582.4)

The general supervisor of the photography group of the graphics division is Ken Hall. The supervisors of the subordinate photo lab and camera operations sections are Peter Griffen and Howard Alford, respectively.¹⁵ The disputed photographic specialists work in the subsections of both sections.

¹⁵The parties agree that Hall, Griffen and Alford are excluded from the unit as supervisors.

In the photo lab section, Dick Rau is leader of the color print subsection which has three other employees. Jerry Wood is leader of the black and white print subsection which includes one other day shift employee. Jack Austin is leader of the black and white print subsection swing shift which has three other employees.

In the camera operations section, Bennie Walker is leader of the still and motion picture photography subsection which has four other employees. Floyd Rupp is leader of the graphics and visual arts production subsection which has five other employees.

All of these photographic specialists may participate in hiring interviews of individuals designated for their subsections. However, both section supervisors Griffen and Alford testified that the subsection leaders' recommendations are only a factor in hiring decisions and that the section supervisors have the final hiring authority.

The subsection leaders train the other subsection employees, schedule their work, monitor quality control, and are responsible for the timely performance of work. They only participate in the evaluation process in that they orally consult with the section supervisor before the section supervisor writes and signs the performance evaluation.

Employees are routinely traded among the three subsections within the photography department depending on workload. Such

temporary transfers require only agreement among the subsection leaders. However, any permanent transfer into or out of the photography group would have to be approved by section supervisors Griffen or Alford. The assignment of overtime and approval of vacation time is done in a routine and clerical manner based upon well established principles and policies of the lab.

Each subsection leader performs the technical duties of the other employees for varying lengths of time. Three perform such duties as much as 80 percent of the workday. The remainder of the time they are occupied with customer service, supplies and other administrative functions. Rau is the temporary section supervisor of the photo lab when Griffen is sick or on vacation, and Rupp is Alford's substitute in the camera operations section in his absence.

The record indicates that the authority exercised by photographic specialists results from their positions as subsection lead persons with superior knowledge and experience in their field. Only the section, division and department heads exercise true supervisory authority over the subsection employees. The photographic specialists, like Butcher in the printing plant, do not exercise independent judgment in significant personnel functions. Rather, their tasks of work scheduling, training and quality control involve control only over work processes. The supplemental supervisory capacity of

Rau and Rupp does not invest either employee with supervisory authority. The sporadic and atypical exercise of supervisory duties will not alone result in the exclusion of an employee.

Based upon the foregoing facts and discussion, we find that the five photographic specialists acting as subsection leaders must be included in the LLNL technical unit.

Anthony Oravetz - Printroom Operations Specialist (Class Code 585.3) and Dorothy Mendoza - Senior Technical Coordinator (Class Code 538.3)

Anthony Oravetz is a printroom operations specialist in the printroom of the Communications Section in the Engineering Department. George Wagner supervises the printroom. Cliff Bishop, supervisor of the communications section, testified regarding the nature of Oravetz¹ duties.

The printroom performs three functions: 1) record keeping, 2) camera operations, and 3) duplication of drawings, diagrams and blue prints. There are 27 employees in these three areas, including the head of each subsection. Anthony Oravetz is the head of the duplication subsection. Dorothy Mendoza is the head of the record keeping subsection. Both subsections have seven employees and both heads report to Wagner.

Oravetz is an hourly employee who receives a seven percent higher wage than the other employees in the group. He receives the same benefits, and qualifies for and receives overtime as the other duplicating employees. He spends 50 percent of his time operating one of the duplication machines.

Bishop testified that Oravetz recommended the one person who has been hired in the duplication subsection since he became subsection head. However, he also indicated that Oravetz may recommend several candidates for a single position to Wagner who gives the recommendations to Bishop. Bishop has the final hiring authority to select from the candidates.

Bishop also testified that Oravetz has issued one written warning. However, the incident took place when Wagner was absent. Bishop directed Oravetz to take care of the matter and Bishop reviewed the warning before it was delivered.

Oravetz contributes to the performance evaluation process but his comments are incorporated into a report written by Wagner and reviewed by Bishop. He assigns customer orders based upon his recognition of the complexity of the job and expertise of the available employees. As subsection lead, Oravetz schedules vacations and approves overtime based on the criteria that a full crew must be available to do the work within the time required. Overtime is limited to a set amount of hours per week for each employee. Extra overtime must be approved by higher authority. Temporary transfers are another routine function in which the three subsection heads trade, share or shift employees among the areas depending on the requirements of the workload. Any actual dispute concerning transfers within the printroom would be resolved by Wagner. Transfers outside of the printroom must be approved by higher authority.

The record reveals that Oravetz has very limited personnel action functions. The one written warning issued by Oravetz was not a typical or normal part of his duties. The sporadic and atypical exercise of supervisory duties will not alone result in the exclusion of an employee. Oravetz¹ assignment and quality control responsibilities are based upon his competence and experience as a lead person rather than on supervisory authority. The additional scheduling and administrative duties he performs in the duplication subsection are routine functions performed within the narrow requirements of laboratory policy.

Based on these facts we conclude that Anthony Oravetz is not a supervisor and therefore include him in the LLNL technical unit.

Senior technical coordinator Dorothy Mendoza is the functional equivalent of Anthony Oravetz in the record keeping subsection of the printroom. She has 20 years seniority in her subsection. She does the work of the other employees within her section and more advanced technical work about 65 percent of the time. The rest of her time is taken up with consultations with other employees and performance of administrative functions. She meets with customers of the subsection and sees that "service requests are properly handled."

Mendoza may participate in hiring interviews conducted by Wagner. Together they recommend candidates to Bishop who has the authority to make final hiring decisions.

Wagner writes performance evaluations which are reviewed by Bishop. Bishop testified that Mendoza has the power to issue a written reprimand but in practice over 20 years she has never issued one. She has authority to trade employees among the subsections of the printroom in consultation with other subsection leaders. She has no authority to transfer people in or out of the printroom or communications section.

Mendoza's administrative responsibilities include signing time cards, approving overtime and scheduling vacations. She has training responsibility for new employees hired into her section.

The foregoing facts indicate that Dorothy Mendoza, like Anthony Oravetz, is a lead person. She spends a substantial amount of time doing work similar to the other employees in the bargaining unit. As the most knowledgeable person in the record keeping subsection, her authority is limited to the control of work processes rather than personnel functions.

Participation on a hiring panel with a higher supervisor is insufficient to demonstrate supervisory authority. The transfer function actually involves the routine cooperation of subsection leads in shifting employees' assignments within the printroom depending upon the requirements of the workload.

Mendoza's other duties, such as signing time cards and scheduling vacations, are also routine and clerical because they are performed within the narrow confines of LLNL policy.

Based on the foregoing facts, we find that Dorothy Mendoza is not a supervisor and therefore include her in the LLNL technical unit.

Gerald Belluomini and Leland Fox - Designers (Class Code 534.3)

Gerald Belluomini and Leland Fox are designers who each have 16 years seniority in the drafting section of the Division of Mechanical Engineering. They are the only two group leaders of 12 in the drafting section who are not professionals and who UC seeks to exclude from the technical unit. They receive the same pay scale and benefits as other designers within the drafting department who are not group leaders.

Belluomini is the leader of a group consisting of a designer and a design drafter. Fox is the leader of a group consisting of a designer, a design drafter and a drafter. Both Belluomini and Fox work 50 percent of the time doing work substantially the same as that of their subordinates. Both work for project engineers who are professional employees but have no supervisory authority.

Roy Robataille, the drafting supervisor, supervises the designers. He testified that he makes hiring, firing and transferring decisions with approval of the division head. Belluomini and Fox write performance evaluations and rank the

employees in their respective areas. However, the final ranking is done in a meeting with all 12 group leaders. Robataille may resolve disputes in the meeting and he determines salaries according to the ranking hierarchy. He testified that Belluomini and Fox have authority to issue verbal or recommend written warnings to the employees in their groups. In practice, however, neither has ever issued a verbal warning or recommended a written warning.

Both Belluomini and Fox may assign work to their subordinates based upon the expertise of their crew and the time restraints imposed by the project engineer. However, if they are not present the project engineer may assign work to members of the crew. Overtime is limited by laboratory policy. The drafters work according to the time requirements of the project and submit their hours. Robataille receives a "run-out chart" on the drafting organization and checks on the overtime hours.

Based on these facts, it is concluded that Belluomini and Fox should be included in the technical unit. They do work substantially similar to that of the other designers and drafters. While they assign work and oversee the quality of work within their groups, drafting supervisor Robataille makes all significant personnel recommendations to his supervisor. Neither Belluomini nor Fox has ever exercised the power to recommend a written warning.

As with other group leaders, the functions of work assignment and control of work processes are based upon their greater experience and competence as lead persons. They assign work based upon the complexity of the job and the availability of the individual qualified to do the work. Quality control is a function of their expertise within the field rather than supervisory authority. The project engineer may also review work and send it back for revision. The other paperwork obligations of the group leaders such as overtime are purely routine and clerical functions.

The Board, therefore, finds that Belluomini and Fox are not supervisors and are appropriately included in the LLNL technical unit.

Max Allison, Doug Dickson and J. Michael Spink - Senior Computer Technologist (Class Code 526.3)

UC seeks to exclude the entire classification of senior computer technologist, which currently has three incumbents. Senior computer technologists Max Allison, Doug Dickson and J. Michael Spink work in the operations division of the National Magnetic Fusion Energy Computer Center. Their working title is shift supervisor. Allison works on the day shift, Dickson on swing shift and Spink on graveyard. They report to Marilyn Richards who is the operations division manager.¹⁶

¹⁶Marilyn Richards is a computer scientist/math programmer (Class Code 285.0). She has been placed in the LLNL professional unit. Unit Determination for Professional

Richards in turn reports to Hans Brujines, who is the deputy director of the center. Richards testified that she is in charge of the operations division seven days a week, twenty-four hours a day.

Each shift has a senior computer technologist and three other employees in lower level technical classes. Richards testified that Allison, Dickson and Spink perform work similar to their subordinates 10 to 15 percent of the time. The rest of the time they monitor the operation of the machines. They also monitor the computer log to insure that entries have been made correctly.

Richards testified that the shift leaders assign work to the three employees on their shifts as part of their supervisory responsibilities. She later, however, testified that the swing and graveyard shifts have standing orders and that assignment to tasks that must be done periodically are made week by week by the shift leaders.

The swing and graveyard shift leaders are the highest classification on that shift, yet Richards indicated that she is in charge around the clock and that she meets with the swing shift supervisor daily and the graveyard leader weekly.

Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California, supra, PERB Decision No. 246b-H.

Richards' testimony indicates that supervisory authority exercised by the shift leaders in relation to personnel decisions is minimal. In the last three years only four new employees have been hired. Allison was present at two of the four interviews. Richards testified that he was invited to those interviews because she wanted his opinion. At the other two interviews no shift supervisor was invited.

Richards testified that each shift leader has the power to recommend written warnings, and that she has followed the recommendations 100 percent of the time. However, in three years there has only been one written warning. That warning was reviewed and signed by Richards as well as the shift leader.

On one occasion an employee from the swing shift was disciplined by discharge. Supervisors higher than both Richards or Dickson made the decision without consultation with Dickson. He was not in any way involved in a grievance which was subsequently filed by the employee.

All three shift leaders write and issue annual performance evaluations. Richards may and has changed an evaluation issued to an employee. The evaluations are only one tool used in the salary setting process. The shift supervisors meet with Richards and by consensus arrive at a ranking for the nine employees on the three shifts. Richards then sets salaries based upon the ranking system and sends the salary recommendation to her supervisor. Richards has the authority

to make the final determination on the ranking and the salary recommendation.

Job and task assignments of the shift crews are routinely performed as part of a set pattern. The shift leads may approve overtime and call in off-duty personnel in order to maintain required staffing levels. The administrative duties of maintaining a full crew are again clerical functions set within standard laboratory practice and policy.

The evidence does not establish that the shift leaders make personnel decisions or make effective recommendations. Only once has a shift leader recommended a written warning and when more serious disciplinary action was taken the shift supervisor was not consulted.

The annual performance evaluations do not have an impact on the employees on the separate shifts except as they apply in salary setting. These processes involve the shift leaders but the actual effective recommendations and decisions begin with Richards and rise up the supervisory chain of command.

We find based on the record that UC has not demonstrated that the class of senior computer technologist is supervisory. It is, therefore, included in the LLNL technical unit.

Fire Captains (Class Code 651.3) and Fire Lieutenants (Class Code 651.2)

The fire captains and fire lieutenants work in the emergency operations section of the Fire Safety Division within the Hazards Control Department. The chain of command starts

with the head of the department. Under the department head is the fire chief in charge of the division. The assistant fire chief is the leader of the emergency operations section. This section is the laboratory's fire fighting operation.

There are two stations filled on 24-hour shifts by 30 employees with seven firefighters and three officers on each shift. Five of the nine officers are lieutenants and four are captains. Station number one, which is the laboratory station, has an engine crew and a ladder truck crew. A captain is in charge of each shift and works with the three firefighters on the engine crew. A lieutenant is in charge of the ladder truck crew which consists of two firefighters. The second station has only one crew which, depending on the shift, has either a lieutenant or a captain in charge of the two firefighters stationed there.

Captains and lieutenants work 24-hour shifts during the week. Their duties are nearly identical. They rotate from station to station and crew to crew, although a captain is always in charge of the laboratory station and the engine crew. In non-emergency situations firefighters perform the routine functions of the stations such as approving welding permits, preparing emergency response cards, and testing hydrants and fire hoses. The captains and lieutenants perform the administrative record keeping associated with the permits, safety checks and other routine duties performed by the firefighters.

In emergency situations the crews are sent out depending upon the needs of the emergency. Assistant Chief Chandler is available at least eight hours of each shift during the week. During the rest of these shifts and on weekends he is on 24-hour call and will be notified in the event of an emergency. He may decide to come to the station and take charge of the situation or decide that it is not serious enough to warrant his direct attention. One of the captains or lieutenants will then be in charge of the crew or crews dispatched. If the assistant chief takes charge the captain or lieutenant performs work similar to that of the firefighters. They also perform any crew tasks required by an emergency situation.

Personnel decisions, except verbal warnings, are recommended to the assistant chief when he is on duty and taken only with the review and approval of the division leader and department head. Hiring, transfers, promotions and written warnings are signed by the division leader and department head. Captains and lieutenants may issue verbal warnings for such things as tardiness and poor performance. They may recommend a written warning to the assistant chief who, if he concurs, will prepare the papers and pass them on with his recommendation to the division leader. The written warnings most often issued are for tardiness. These warnings, according to department practice, are triggered automatically by a given number of incidents.

The record indicates that captains and lieutenants write annual performance evaluations, but is unclear as to the effect of these evaluations. Wage increases come in automatic step increments. Poor performance appraisals may be used to withhold the step increase. However, only one employee has been held back in three and a half years and it was an extraordinary situation which ended in the termination of the employee.

While the record does support the conclusion that the fire captains and lieutenants are crew leaders and do have administrative and ministerial duties and authority at the fire stations, it does not support the conclusion that they are supervisors. It is the assistant fire chief who exercises true supervisory authority.

The authority exercised by these captains and lieutenants is not significantly different from that exercised by the fire captains the Board found to be included in the bargaining unit in the Unit Determination for the State of California, supra, PERB Decision No. 110c-S, at p. 42. The assignment of tasks during an emergency and the distribution of routine duties during the workday involves the control of work processes and not personnel decisions. The other administrative duties are routine and clerical. We therefore find that fire captains and fire lieutenants are included in the LLNL technical unit.

Fire Lieutenant, Forty-Hour (Class Code 652.2)

The record reveals that the forty-hour fire lieutenant works a five-day, 40-hour work week as the administrative assistant to the assistant fire chief. In addition to the administrative duties, the lieutenant oversees and directs four dispatchers who work in the emergency operations section. The dispatchers are not a part of the technical unit. These facts do not establish that this employee is a supervisor. The Board therefore finds that UC has not met its burden of proof and orders the inclusion of the forty-hour lieutenant in the LLNL technical unit.

DISPUTED CONFIDENTIAL POSITIONS

Edward Short and William Tapley - Computer Programming Technologists (Class Code 524.2)

The parties agree in their post-hearing briefs, and evidence exists in the record to support the exclusion of computer programming technologists Edward Short and William Tapley as confidential employees. Short works primarily for the employee and labor relations department at LLNL. Tapley works primarily with the compensation analysis division. Their work requires not only access to confidential information, but discussion and close cooperation with UC management to provide information requested and necessary for the development of management positions. The Board therefore excludes both Short and Tapley from the LLNL technical unit.

Janice Waechtler - Computer Programming Technician (Class Code 524.1)

John McCall is the deputy manager for the Information Technology Division of the Administrative Informations Systems Department. He testified that Janice Waechtler is a computer programming technician whose responsibilities involve monitoring the presence, accessibility and control of the information used in the department. She has access to all of the information in the system including the confidential information used by Short and Tapley. However, she has no authorization to "browse" through this information in the computer. McCall in fact testified that she could be disciplined for such activity. The distinction between technologists Short and Tapley and technician Waechtler is that while the technologists develop programs and use the confidential information, the technician's responsibility is to assure that the body of information is present and accessible in the system.

Waechtler is also in charge of the auditing of personnel action forms (PAF). These are routine forms generated by supervisors prior to any personnel action being taken. They are generally actions of which employees are already aware, such as transfers and changes of address. The PAF's are not used in formulating labor relations policy or management positions. McCall testified that the only item of collective bargaining interest submitted on the PAF would be the

designation of whether an employee was excluded from or included within the bargaining unit. This information would be of little consequence to bargaining positions or management policy once the determination has been made.

Waechtler may occasionally, perhaps six times in the last year, work as backup for Short or Tapley. However, McCall testified she would only substitute on a technical level. She would run a program which had already been developed.

From this record the Board finds that Janice Waechtler's duties do not normally require access to confidential information which would require her exclusion as a confidential employee. She is therefore included in the LLNL technical unit.

ORDER

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

(1) Employee Barbara McDonald, Computer Support Technologist (Class Code 525.2) is excluded from the Lawrence Livermore National Laboratory (LLNL) technical unit according to the stipulation of the parties and based upon the facts and reasons stated therein.

(2) The classification of Senior Computer Technologist (Class Code 526.3) and incumbents Max Allison, Doug Dickson and J. Michael Spink are included in the LLNL technical unit for the reasons stated in the foregoing Decision.

(3) The employees listed below are included in LLNL technical unit for the reasons stated in the foregoing Decision.

Robert Butcher	Lead Operator-Printing Services (Class Code 584.3)
Dick Rau Jerry Wood Jack Austin Bennie Walker Floyd Rupp	Photographic Specialists (Class Code 582.4)
Anthony Oravetz	Printroom Operations Specialist (Class Code 585.3)
Dorothy Mendoza	Senior Technical Coordinator (Class Code 538.3)
Gerald Belluomini Leland Fox	Designers (Class Code 534.3)
Janice Waechtler	Computer Programming Technician (Class Code 524.1)

(4) The classifications of Fire Captain (Class Code 651.3), Fire Lieutenant (Class Code 651.2) and Fire Lieutenant, Forty-Hour (Class Code 652.2) are included in the LLNL technical unit for the reasons stated in the foregoing Decision.

(5) The employees listed below are excluded from the LLNL technical unit as confidential employees for the reasons stated in the foregoing Decision.

Edward Short	Computer Programming Technologists
William Tapley	(Class Code 524.2)

(6) Any technical errors in this Order shall be presented to the director of representation who shall take appropriate action thereon in accordance with this Decision.

By the BOARD