

Education Employer-Employee Relations Act (HEERA)² creating a separate bargaining unit for skilled crafts employees at each of the following four University of California (UC) institutions: UC San Francisco, UC Los Angeles, Lawrence Livermore National Laboratory (LLNL),³ and the combined UC Berkeley/Lawrence Berkeley Laboratory. Pending that decision, exclusionary issues were raised by the parties with respect to the alleged managerial, supervisory, confidential and casual status of employees in the various proposed skilled crafts units, as well as several other proposed UC units. The hearing on these exclusionary issues began on July 14, 1982. See Unit Determination for Employees of the Regents of the University of California (9/4/81) PERB Order No. Ad-114-H and (4/20/82) PERB Order No. Ad-114a-H. It soon became apparent that the development of the record for this and related UC units would be an unduly lengthy and complex process since a total of approximately 7,000 exclusionary issues were

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

³The only exclusionary issues raised in the LLNL skilled crafts unit pertained to the status of alleged casual employees. The Board has previously resolved these issues. See Unit Determination for Technical, Skilled Crafts, Services and Professional Employees of the University of California (Lawrence Livermore National Laboratory Casual Employees) Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (3/4/83) PERB Decision No. 290-H. The LLNL skilled crafts unit is therefore not discussed herein.

involved. As a result, on August 4, 1982, the Board ordered the hearing suspended pending further procedural orders. Unit Determination for Employees of the Regents of the University of California (8/4/82) PERB Order No. Ad-114b-H.

Thereafter, on August 12, 1982, the director of representation issued a pre-hearing notice and order for investigation, production of documents, and hearing. See Unit Determination for Employees of the Regents of the University of California (Exclusionary Phase) (9/14/82) PERB Order No. Ad-114c-H. This order directed UC to submit declarations and relevant supporting documents under penalty of perjury in support of each whole classification (List A submission) and/or individual employee (List B submission) exclusionary claim. The order provided that the documentation submitted by UC should be legally sufficient to constitute its case-in-chief for all disputed classifications and employees.

The employee organizations were directed to review the material submitted by UC and to submit counter-declarations and relevant documents where they opposed UC's exclusionary claims. The employee organizations were advised that a failure to file counter-declarations would be deemed a waiver of opposition to the claim unless opposition was stated on the ground that a prima facie case was not established by UC. The parties were then advised that PERB would examine the disputed claims on the basis of the totality of materials submitted by

the parties to determine whether a sufficient case was presented for decision by the Board itself, or whether further investigation or formal hearing would be required to resolve disputed issues of fact.

As a result of the procedural history described above, the record in this matter substantially consists of numerous declarations submitted by UC supporting its exclusionary claims. Although the employee organizations responded with no documentation of their own, they argue that UC's documentation is insufficient to establish a prima facie case for exclusion. Therefore, they contend, none of the claimed exclusions should be allowed. The record also consists of the transcript and exhibits in the matter of Unit Determination for Skilled Crafts Employees of the University of California, supra, PERB Decision No. 242-H, including class specifications, job descriptions, the staff personnel manual, and salary schedules. As discussed, infra, the record in some cases establishes and in some cases does not establish a prima facie case sufficient to exclude the disputed classifications and employees.

DISCUSSION

The term supervisory employee is defined in section 3580.3.4 This definition essentially parallels the

⁴Section 3580.3 provides:

"Supervisory employee" means any individual, regardless of the job description or title,

definition of supervisory employee found in the State Employer-Employee Relations Act (SEERA).⁵ In deciding this case, we find no reason to depart from the Board's conclusions

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.

Supervisory employees have limited rights under SEERA as set forth in section 3580 et seq.

⁵The SEERA is codified at Section 3512 et seq.

The definition of "supervisory employee" in section 3522.1 of SEERA does not contain the department chairperson language of HEERA. 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,

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.6 Thus, we conclude that the burden of proving an exclusionary claim rests with the party asserting it.⁷ Stipulations of fact submitted by the parties are accepted as conclusive. Additionally, see the detailed discussion regarding supervisory employees 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.

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.

⁶Unit 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.

⁷See also In Re: The State Employer Employee Relations Act, Phase III, Unit Determination Proceeding (10/18/79) PERB Order No. Ad-79-S.

As was stated in that case, the Board's analysis according to the principles established in the SEERA unit determination decision has been complicated because the record provides few direct facts regarding the amount of time the employees in issue perform duties substantially the same as those of their subordinates, or whether the exercise of supervisory duties is sporadic and atypical or requires the use of independent judgment. Absent these facts, the evidence must be conservatively approached. Thus, the point at which an employee's supervisory obligation to the employer outweighs the entitlement to the rights afforded rank-and-file employees will be reached only where the record indicates the substantial performance of supervisory duties. Additionally, certain supervisory duties may indicate a serious potential for a conflict of interest with bargaining unit members and thus require the exclusion of the employee.

UNIT 4 - UC BERKELEY/LAWRENCE BERKELEY LABORATORY

SKILLED CRAFTS

UC argues that the following job classifications placed in the UC Berkeley/Lawrence Berkeley skilled crafts unit are comprised partially or entirely of supervisory employees who should be excluded from the unit:

<u>Classification</u>	<u>Class Code</u>
Physical Plant Mechanic Supervisor	8170
Assistant Physical Plant Mechanic Supervisor	8171
Senior Physical Plant Mechanic	8172

<u>Classification</u>	<u>Class Code</u>
Chief Stationary Engineer	8251
Assistant Chief Stationary Engineer	8252

After a review of the record submitted to the Board, the parties stipulated to the exclusion of all incumbents in the physical plant mechanic supervisor and chief stationary engineer classifications as supervisory. The Board has held that it will approve a stipulation in a unit determination matter when the stipulation does not contravene the Act or established Board policies. Centinela Valley Union High School District (8/7/78) PERB Decision No. 62. The stipulations are therefore approved by the Board based upon the record in this proceeding.⁸

⁸The Board does not specifically designate these employees as supervisory. In the State Employer-Employee Relations Act, Phase III, Unit Determination Proceeding, supra, 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 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 approves only the exclusion of the classifications from the unit and not the specific basis for the exclusions.

The remaining exclusionary issues in this unit are next addressed.⁹

Assistant Physical Plant Mechanic Supervisor (Class Code 8171)

Despite the fact that physical plant mechanic supervisors are excluded from the unit by stipulation, it is important to discuss their responsibilities in order to gain a more complete understanding of the duties of employees in other unit classifications. The physical plant mechanic supervisor classification is designed to be the most responsible of five classification levels in UC's physical plant mechanic

⁹In its opening brief, the California State Employees Association (CSEA) submitted a declaration by its counsel in opposition to UC's proposed exclusions from this unit. The declaration contains statements allegedly made by UC representatives at an informal settlement conference concerning UC Berkeley/Lawrence Berkeley Laboratory skilled crafts unit exclusionary issues. Additionally, the declaration relates facts concerning a February 28, 1983 telephone call allegedly made by CSEA counsel to a UC official. Finally, the declaration refers to an exhibit submitted during a 1981 arbitration case between CSEA and UC which allegedly clarifies the relationship of certain UC employees.

UC has moved to strike this declaration and those portions of CSEA's brief relying upon or referring to the declaration. The motion is granted. We note that the declaration was untimely filed after the express deadlines set by the Board for submission of evidence and argument in this proceeding. Moreover, it is the policy of the Board to facilitate agreement between parties whenever possible. This policy mandates that the Board refuse to consider as evidence statements made in connection with settlement conferences, so as not to create a chilling effect on settlement discussions.

series.¹⁰ Physical plant mechanic supervisors coordinate and supervise the work of large physical plant mechanic crews. Their activities involve daily scheduling of work assignments, training, ordering and inspecting material required for the job, dispatching, establishing and adjusting work procedures to meet schedules, analyzing and resolving work problems, maintaining records, recommending personnel actions and exercising responsibility for the quality of work produced by those supervised. The record reveals that physical plant mechanic supervisors either directly participate in or make effective recommendations with regard to hiring and promotion decisions. Further, physical plant mechanic supervisors are responsible for the annual and probationary performance evaluations of their subordinates. These evaluations play a critical role in decisions regarding merit increases and/or in the determination of whether probationary employees will be retained or discharged. The conclusion, as stipulated by all parties, is that physical plant mechanic supervisors possess significant supervisory authority.

In contrast, the authority of assistant physical plant mechanic supervisors is much more limited. They work under the

¹⁰The other four levels are assistant physical plant mechanic supervisor, senior physical plant mechanic, lead physical plant mechanic (8173) and physical plant mechanic (8174).

general supervision of physical plant mechanic supervisors. Their function is primarily to transmit orders and explain work tasks to subordinates. The evidence indicates that assistant physical plant mechanic supervisors do not exercise independent judgment in supervisory matters. Hiring, promotion, transfer, discipline and grievance decisions are made, or at least substantially reviewed, by individuals at higher levels in the physical plant hierarchy. Thus, we find assistant physical plant mechanic supervisors possess no significant supervisory authority and include the classification in the unit.

Senior Physical Plant Mechanic (Class Code 8172)

Lower in the physical plant series hierarchy are senior physical plant mechanics. Senior physical plant mechanics frequently participate in the design of various campus construction projects. Their main function is to help solve maintenance, repair and installation problems around the campus.

There are two individuals in this classification at the Berkeley campus whom UC seeks to exclude. P. J. Betterdorf and John M. Jencks work under the direction of assistant physical plant mechanic supervisors performing complex tasks which often require the use of sophisticated equipment. The record reveals that, for the most part, these two senior physical plant mechanics do substantially similar work to that of their subordinates. Moreover, the decisions of these employees are, without exception, subject to the independent review of higher

level employees. There is no evidence that they possess final or effective authority in personnel matters. Thus, we find that the two disputed senior physical plant mechanics are not supervisors and include them in the unit.

Assistant Chief Stationary Engineer (Class Code 8252)

UC also seeks to exclude the classification of assistant chief engineer at the Berkeley campus. The highest level of the university's stationary engineer series is the chief stationary engineer classification. As noted above, chief stationary engineers are excluded by stipulation. Chief stationary engineers are responsible for supervising the operation, maintenance and repair of a high pressure steam plant. That responsibility includes personnel actions such as recruiting, hiring, scheduling, assigning and coordinating the work of stationary engineers. Furthermore, chief stationary engineers evaluate employee performance and supervise the operation and maintenance of draft, boiler and water equipment.

The responsibilities of assistant chief stationary engineers are not nearly so broad. Their participation in the hiring process is limited to recommending to the chief stationary engineer the person they would like hired into the unit. The chief stationary engineer or his superior makes the final decision on hiring.

Assistant chief stationary engineers perform various general administrative functions. They gather data in

grievance matters, establish daily hours of work, approve overtime, adjust staffing assignments and attend supervisory training sessions. However, the record fails to establish that these employees exercise independent authority in performing these functions, or that such functions can be characterized as anything more than routine and clerical. While assistant chief stationary engineers undoubtedly possess a high level of technical expertise and work with complex and difficult equipment, we do not find that they possess the degree of supervisory authority required for exclusion. The assistant chief stationary engineer classification is therefore included in the unit.

UNIT 5 - UC SAN FRANCISCO SKILLED CRAFTS

UC argues that the following job classifications placed in the UC San Francisco skilled crafts unit are comprised entirely of supervisory employees:

<u>Classification</u>	<u>Class Code</u>
Physical Plant Mechanic Supervisor	8170
Assistant Physical Plant Mechanic Supervisor	8171
Elevator Mechanic Supervisor	8187
Chief Medical Center Stationary Engineer	8201
Assistant Chief Medical Center Stationary Engineer	8202

No stipulations have been reached with regard to these classifications.

Physical Plant Mechanic Supervisor (Class Code 8170) and
Assistant Physical Plant Mechanic Supervisor (Class Code 8171)

At UC San Francisco, there are eight physical plant mechanic supervisors and two assistant physical plant mechanic supervisors. The evidence submitted on these classifications is virtually identical to the evidence submitted for the same classifications at the Berkeley campus, discussed supra. The record indicates that the responsibilities of the employees in these classifications do not differ substantially from those of their counterparts at the Berkeley campus.

As discussed above, the record for the Berkeley skilled crafts unit indicates that physical plant mechanic supervisors should be excluded from the unit because they possess substantial supervisory authority. The same is true for employees in this classification at the UC San Francisco campus. Physical plant mechanic supervisors in the UC San Francisco skilled crafts unit have substantial supervisory authority in the areas of hiring, promotion, transfer, and discipline. The exclusion of the classification from the unit is therefore warranted.

The UC San Francisco assistant physical plant mechanic supervisor classification also compares closely to the same classification in the Berkeley unit. Incumbents in this classification have a limited role in personnel decisions which are made or substantially reviewed by individuals at higher

levels in the physical plant hierarchy. Thus, assistant physical plant mechanic supervisors are found to lack a sufficient degree of supervisory authority to justify their exclusion. They are therefore included in the unit.

Elevator Mechanic Supervisor (Class Code 8187)

UC also alleges that elevator mechanic supervisors should be regarded as supervisors. This classification is the higher of two classifications in the elevator mechanic series. There is one incumbent at the DC San Francisco campus.

The duties of the employee at issue are to coordinate and supervise the work of elevator mechanics in the repair and maintenance of campus elevators. He also makes or modifies daily work assignments of subordinates; insures that new and existing staff receive proper training; reviews and evaluates the work of subordinates; recommends or initiates personnel actions such as promotions, transfers and disciplinary actions; and maintains various work records. Absent evidence that the elevator mechanic supervisor's decisions in the above matters are subject to substantial review or alteration, we conclude that this classification involves substantial supervisory authority. Therefore, the elevator mechanic supervisor classification is excluded from the unit.

Chief Medical Center Stationary Engineer (Class Code 8201) and Assistant Chief Stationary Engineer (Class Code 8202)

Finally, UC contends that the single incumbent in the chief medical center stationary engineer classification and the four

incumbents in the assistant chief medical center stationary engineer classification should be excluded from the unit as supervisory. The duties of employees in the UC San Francisco stationary engineer series are similar to those of employees in the stationary engineer series at the Berkeley campus.

The chief medical center stationary engineer classification is the most responsible of four levels in the UC San Francisco stationary engineer series.¹¹ The record reflects that the employee in this classification is responsible for supervising the operation, maintenance and repair of a high pressure steam plant. His duties involve recruiting, hiring, scheduling, assigning and coordinating the work of medical center stationary engineers, evaluating employees' performances, and supervising the operation and maintenance of draft, boiler and water equipment. Absent evidence that his supervisory decisions are subject to higher level scrutiny, the chief medical center stationary engineer classification is excluded from the unit.

The supervisory authority of assistant chief medical center stationary engineers is much more limited. The record reveals that employees in this position act only as assistants, not as decision-makers. Where these employees schedule, assign and

¹¹The lower three classifications are assistant medical center stationary engineer, medical center stationary engineer and apprentice medical center stationary engineer.

coordinate work, the record reflects that the duties are merely routine and clerical rather than personnel decisions requiring the exercise of independent judgment. Since the evidence fails to support the conclusion that these employees exercise true supervisory authority, the assistant chief medical center stationary engineer classification is included in the UC San Francisco skilled crafts unit.

UNIT 6 - UC LOS ANGELES SKILLED CRAFTS

UC claims that the following eight job classifications in the UC Los Angeles skilled crafts unit are comprised partially or entirely of supervisory employees:

<u>Classification</u>	<u>Class Code</u>
Physical Plant _____ Supervisor (B)	8181
Physical Plant _____ Supervisor (A)	8182
Elevator Mechanic Supervisor	8187
Senior Building Maintenance Supervisor	8210
Building Maintenance Supervisor	8211
Senior Building Maintenance Worker	8212
Chief Operating Engineer	8236
Assistant Chief Operating Engineer	8237

After a review of the record submitted to the Board, the parties stipulated to the exclusion of all incumbents in the following classifications: physical plant _____ supervisor (B); physical plant _____ supervisor (A); elevator mechanic supervisor; senior building maintenance

supervisor; building maintenance supervisor and chief operating engineer. These stipulations are approved by the Board based upon the record in this proceeding.¹²

In light of the party's stipulations, exclusionary issues remain in only two job classifications. These classifications are senior building maintenance worker and assistant chief operating engineer.

Senior Building Maintenance Worker (Class Code 8212)

In the senior building maintenance worker classification containing 187 incumbents, UC urges the exclusion of only employee David Pena as a supervisor. This classification is part of the building maintenance worker series which consists of four levels. Building maintenance worker (8213) is the entry level, followed by senior building maintenance worker, building maintenance supervisor and senior building maintenance supervisor. The top two levels are excluded by stipulation as discussed above.

The senior building maintenance worker level is designed for employees who perform semi-skilled building maintenance tasks on a daily basis. The record reflects that the duties of the employee in dispute are substantially similar to those of his subordinates. Furthermore, this employee has no power to effectively recommend personnel decisions since the building

¹²See footnote 8, supra, at p. 8.

maintenance worker series hierarchy vests true supervisory authority at the two higher levels. Thus, the disputed employee does not exercise true supervisory authority.

David Pena is included in the unit.

Assistant Chief Operating Engineer (Class Code 8237)

Finally, UC contends that four incumbents in the assistant chief operating engineer classification should be excluded from the unit as supervisory. This classification is part of the operating engineers series. Operating engineers are responsible for maintaining and repairing steam plants located in university facilities. Chief operating engineer is the highest classification in the operating engineer series. It is excluded by stipulation as discussed above.

While the record is sparse with regard to assistant chief operating engineers, it is clear that their decisions and recommendations are subject to review and alteration by the chief operating engineer and other superiors. Their scheduling, assignment and coordination duties are merely routine and clerical rather than personnel decisions requiring the exercise of independent judgment. Absent evidence of true supervisory authority, assistant chief operating engineers Albert Cohen, Randall R. Cook, Frank Gullett and Robert Shivers are included in the UC Los Angeles skilled crafts unit.

ORDER

(1) The following classifications are excluded from the UC Berkeley/Lawrence Berkeley Skilled Crafts Unit according to the stipulations of the parties and based upon the record in this proceeding:

<u>Classification</u>	<u>Class Code</u>
Physical Plant Mechanic Supervisor	8170
Chief Stationary Engineer	8251

(2) The classifications of Assistant Physical Plant Mechanic Supervisor (8171) and Assistant Chief Stationary Engineer (8252) are included in the UC Berkeley/Lawrence Berkeley Skilled Crafts Unit for the reasons stated in the foregoing Decision.

(3) Employees P. J. Bettendorff and John M. Jencks in the classification of Senior Physical Plant Mechanic (8172) are included in the UC Berkeley/Lawrence Berkeley Skilled Crafts Unit for the reasons stated in the foregoing Decision.

(4) The following classifications are excluded from the UC San Francisco Skilled Crafts Unit for the reasons stated in the foregoing Decision:

<u>Classification</u>	<u>Class Code</u>
Physical Plant Mechanic Supervisor	8170
Elevator Mechanic Supervisor	8187
Chief Medical Center Stationary Engineer	8201

(5) The following classifications are included in the UC San Francisco Skilled Crafts Unit for the reasons stated in the foregoing Decision:

<u>Classification</u>	<u>Class Code</u>
Assistant Physical Plant Mechanic Supervisor	8171
Assistant Chief Medical Center Stationary Engineer	8202

(6) The following classifications are excluded from the UC Los Angeles Skilled Crafts Unit according to the stipulations of the parties and based upon the record in this proceeding:

<u>Classification</u>	<u>Class Code</u>
Physical Plant _____ Supervisor (B)	8181
Physical Plant _____ Supervisor (A)	8182
Elevator Mechanic Supervisor	8187
Senior Building Maintenance Supervisor	8210
Building Maintenance Supervisor	8211
Chief Operating Engineer	8236

(7) The following employees are included in the UC Los Angeles Skilled Crafts Unit for the reasons stated in the foregoing Decision:

<u>Name</u>	<u>Classification</u>	<u>Class Code</u>
Pena, David	Senior Building Maintenance Worker	8212
Cohen, Albert	Assistant Chief Operating Engineer	8237

<u>Name</u>	<u>Classification</u>	<u>Class Code</u>
Cook, Randall R.	Assistant Chief Operating Engineer	8237
Gullett, Frank	Assistant Chief Operating Engineer	8237
Shivers, Robert	Assistant Chief Operating Engineer	8237

(8) 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