

7 PERC ¶ 14122

HEERA UNIT DETERMINATION - CLERICAL UNIT

California Public Employment Relations Board

In the Matter of: Unit Determination for Clerical Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act)

Docket No. SF-RR-1002 et al.

Order No. 244b-H

March 31, 1983

HEERA Unit Determination (Clerical Employees)
Before Tovar, Jaeger, Morgenstern and Burt, Members*

Unit Determination -- Casual Employees -- Expectation Of Continued Employment -- -- 16.452, 34.392 Where university did not submit evidence that employees did not have reasonable expectation of continued employment, following classifications were not casual employees and were included in clerical unit: (1) clerk; (2) assistant clerks; (3) bibliographers I and II; and (4) survey worker.

APPEARANCES:

Glenn Rothner, Attorney (Reich, Adell & Crost) for American Federation of State, County and Municipal Employees, AFL-CIO; Philip E. Callis, Attorney for California State Employees Association; Douglas H. Barton, Attorney (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

DECISION

On September 30, 1982, the Public Employment Relations Board (PERB or Board) issued a decision¹ under the Higher Education Employer-Employee Relations Act (HEERA)² creating a bargaining unit of clerical and allied services employees at the University of California (UC). Pending that decision, exclusionary issues were raised by the parties with respect to the alleged managerial, supervisory, confidential and casual status of employees in this unit.³

Thereafter, the parties stipulated for the purposes of any representation election to the exclusion, as managerial, supervisory or confidential, of the classifications and employees listed in Appendices A and B attached hereto. The parties also stipulated that each employee organization may identify certain disputed employees who shall vote challenged ballots in any representation election if the parties are unable to agree whether they should be included in or excluded from the unit. 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. A review of the record herein reveals that it is adequate to support the stipulations. Therefore, the stipulations are approved by the Board.⁴ The only remaining exclusionary issues to be decided in the clerical and allied services unit are those involving alleged casual employees.

CASUAL EMPLOYEES

Casual employees are those who, due to their sporadic or intermittent relationship with the employer, lack a sufficient community of interest with regular employees to be included in the representational unit. *Unit 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; citing *Mission Pak Co.* (1960) 127 NLRB 1097 [46 LRRM 1161]. In considering the status of alleged casual employees and the appropriateness of excluding them from the clerical and allied services unit, we are required to consider the following criteria set forth in subsection 3579(a) of HEERA 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:

(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.

In addition to the above statutory criteria, the Board has consistently held, in accordance with other jurisdictions, that such factors as qualifications, job function, compensation, hours of work, fringe benefits, integration of work function, and interchange between employees are relevant in determining community of interest.⁵ As stated in *Monterey Peninsula Community College District, Id.*:

. . . community of interest is not determined by going down a check list of these factors. The point of the comparison is to reveal the interests of the employees and ascertain whether they share a substantial mutual interest in matters subject to meeting and negotiation. (Citation omitted.) The interests of included employees must be mutual not distinct, and substantial not tenuous. Thus, employees may be excluded from a particular unit either because their interests are separate and apart from those of the employees in that particular unit, (citation omitted) or because their interest in negotiable matters subject to the control of the employer is so insubstantial that they do not share mutual interests with other unit employees. (PERB Decision No. 76 at p. 13.)

UC has designated several job classifications in the clerical and allied services unit, which it claims are designed exclusively for employees who have a casual employment relationship with the university. These classifications are:

Classification

Class Code

Clerk

4673

Assistant IV

4919

Assistant III

4920

Assistant II

4921

Assistant I

4922

Bibliographer II

6732

Bibliographer I

6733

Survey Worker

7233

UC alleges that many of these classifications are designed for use in part or exclusively by registered students of the university. Where the employment of students in the classifications listed above is contingent upon their status as students of the university, they have been excluded by stipulation. See *Unit Determination for Employees of the Regents of the University of California* (8/4/81) PERB Order No. Ad-114b-H.

UC makes two arguments with regard to alleged casual employees. It first contends that any employee in these classifications who does not qualify for membership in one of the several retirement systems for which university employees may be eligible should be deemed casual and excluded from the bargaining unit. Generally, to be eligible for membership in these systems, a university employee must work more than 50 percent time and have an appointment of more than a year's duration. UC argues that only employees who meet these criteria for retirement system participation have sufficient employment interests to warrant their inclusion in the bargaining unit.

UC, in essence, is attempting to define a point at which an employee's relationship with the university is transformed from intermittent and sporadic to substantial and continuing. UC contends that if an employee fails to satisfy the qualifications for participation in its retirement system, the status of that person is per se casual.

The Board has specifically rejected such an approach. In *Dixie Elementary School District* (8/11/81) PERB Decision No. 171, the Board modified an existing unit of regular full-time, substitute and temporary teachers by including certain unrepresented day-to-day substitutes and temporary teachers. The Board noted that there was:

. . . no indication that the [petition-for] teachers' interest and commitment to, or empathy with, the concerns of others within the bargaining unit, is proportional to their number-of-days-employment. Moreover, to impose a threshold requirement for inclusion in the unit based on number-of-days-employment would be inevitably arbitrary [footnote omitted]. There is no rationale instructing where the line establishing the minimum should be drawn. Accordingly, this Board does not require, as a condition of unit membership, that a classroom teacher work for a specified number of days. (PERB Decision No. 171, at pp. 7-8.)⁶

Additionally, the Board has rejected the argument that less than 50 percent part-time employment alone should automatically result in the casual designation of an employee. See *Belmont Elementary School District, Id.*, EERB Decision No. 7; *Paramount Unified School District*

(10/7/77) EERB Decision No. 33.

The mere fact that an employee does not work a sufficient number of days or percent of time to qualify for participation in a university retirement system does not, in and of itself, indicate that the employee does not share a community of interest with other unit members. The record reveals that the claimed casual employees may perform duties similar to those of regular full-time employees; receive the same rates of pay; have the same qualifications, skills and education; work the same shifts; report to the same supervisors; and receive roughly equivalent benefits. Absent evidence to the contrary, there is no reason to believe that such an employee does not share a substantial community of interest with other unit employees. Ineligibility to participate in one of the university retirement systems is not, by itself, enough to persuade us differently.

UC secondly argues that if the Board does not adopt the retirement system eligibility criterion the individuals in the classifications claimed as casual should nevertheless be excluded from the clerical and allied services unit because they lack a sufficient community of interest with other unit employees and do not have a reasonable expectation of continuing regular employment. UC cites many instances in which employees in disputed classifications are employed on a short-term, part-time basis. UC contends that these employees have only a sporadic, intermittent relationship with the university and, therefore, lack a sufficient community of interest with other clerical and allied services employees to warrant their inclusion in the unit.

Clerk (Class Code 4673)

UC contends that employees in the clerk classification should be designated as casual because they are typically employed on a less than one-half time basis by the university and generally do not hold positions which are on track for ongoing career appointment. Incumbents in the clerk classification provide clerical services to the various academic departments throughout the university. The record reveals, at least for the UC Los Angeles campus, that individuals in the clerk classification work primarily on a short-term basis, are paid an hourly rate and are selected as needed from a pool of individuals who are eligible for employment as clerks.

Employees in the clerk classification work under the same conditions as other unit members, have the same supervision, generally the same qualifications, use the same equipment and perform virtually the same tasks. There is no evidence indicating that clerks do not have a reasonable expectation of continuing employment. We find that clerks have a community interest with the other unit members. This classification should therefore be included in the unit.

Assistant IV (Class Code 4919), Assistant III (Class Code 4920), Assistant II (Class Code 4921) and Assistant I (Class Code 4922)

Employees in the assistant classifications perform a variety of clerical, advising, public contact and/or analytical skills. The levels are distinguished according to the complexity of the duties performed. Incumbents in the assistant III and IV classifications perform skilled and complex duties in support of academic research projects. UC presents only the conclusory evidence that the work all assistants perform is part-time, intermittent and temporary with no guarantee of reappointment. There are no specific facts in the record indicating that employees in these classifications are not reappointed or have no reasonable expectation of continued employment. Absent such evidence, we reject the claim that these employees are casual and include the classifications in the unit.

Bibliographer II (Class Code 6732) and Bibliographer I (Class Code 6733)

Among other assignments, bibliographers read and abstract articles of value to a specific technical or scientific project, compile bibliographies of materials in a given subject matter, prepare index cards for articles of a technical or scientific nature, conduct library research to locate additional references of value to a specific project, check bibliographies against references, and determine which articles are of importance to certain authors working on academic articles. UC's evidence indicates only that bibliographers work on an as-needed basis with no guarantee

that they will be employed beyond the end of their current project. Absent specific evidence that these employees are not reemployed, the Board concludes that these employees have a reasonable expectation of continuing employment. The classification should therefore be included in the unit. *Survey Worker (Class Code 7233)*

UC has also failed to establish that employees classified as survey workers should be excluded as casual. Incumbents in this classification perform a number of tasks associated with collecting written data for survey research projects conducted by the university. The record reflects that the duration of this employment varies considerably. Some surveys are conducted over a period of several days while others may last more than six months. When a survey is completed, a survey worker may be terminated or may continue on another project. Absent specific facts that survey workers lack a reasonable expectation of continued employment, we conclude that they have a significant employment relationship with the university and other clerical and allied services employees. The survey worker classification is therefore included in the unit.

ORDER

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

- (1) The classifications listed in Appendix A are excluded from the Clerical and Allied Services Employees Unit according to the stipulation of the parties and based upon the factual record in this proceeding.
- (2) The positions occupied by the employees listed in Appendix B are excluded from the Clerical and Allied Services Employees Unit according to the stipulation of the parties and based upon the factual record in this proceeding.
- (3) In accordance with the stipulation of the parties, each employee organization may identify certain disputed employees who shall vote challenged ballots in any representation election if the parties are unable to agree whether they should be included in or excluded from the unit.
- (4) The following classifications are not casual and are included in the unit for the reasons stated in the foregoing Decision:

Classification

Class Code

Clerk

4673

Assistant IV

4919

Assistant III

4920

Assistant II

4921

Assistant I

4922

Bibliographer II

6732

Bibliographer I

6733

Survey worker

7233

(5) 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.

*Chairperson Gluck did not participate in this Decision.

1 *Unit Determination for Clerical Employees of the University of California Pursuant to Chapter 744 of Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/30/82) PERB Decision No. 244-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 Statutes of 1978 (Higher Education Employer-Employee Relations Act) (2/4/83) PERB Decision Nos. 241a-H and 244a-H through 248a-H.*

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

3 Subsection 3562(1) of HEERA provides:

"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 education 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.

Section 3580.3 of HEERA 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 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.

Subsection 3562(e) of HEERA 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.

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

4 The Board does not specifically designate these classifications and employees as managerial, supervisory or confidential. 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 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 and employees from the unit and not the specific basis for the exclusions.

5 *Hartnell Community College District* (1/2/79) PERB Decision No. 81; *Monterey Peninsula Community College District* (10/16/78) PERB Decision No. 76. See also *Kalamazoo Paper Box Corp.* (1962) 136 NLRB 134 [49 LRRM 1715].

6 Temporary employees were also included in a bargaining unit of teachers in *Belmont Elementary School District* (12/30/76) EERB Decision No. 7, based on similar working conditions and employment as part of the regular faculty pool.

Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).
