

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LABORERS INTERNATIONAL UNION,)
LOCAL 1276, AFL-CIO,)
)
Employee Organization, Petitioner,) Case No. SF-R-668-H
)
and) PERB Decision No. 586-H
)
REGENTS OF THE UNIVERSITY OF) September 23, 1986
CALIFORNIA,)
)
_____)
Employer)

Appearances: Mocine & Eggleston by Mary H. Mocine for Laborers International Union, Local 1276, AFL-CIO; Hanson, Bridgett, Marcus & Vlahos by Jerrold C. Schaefer for the Regents of the University of California.

Before Hesse, Chairperson; Burt and Craib, Members.

DECISION

BURT Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions to the attached proposed decision of an administrative law judge (ALJ) filed by the Regents of the University of California (UC or University) and by Laborers International Union, Local 1286, AFL-CIO (Petitioner or Union). The ALJ found that a unit of protective service officers (PSOs) at Lawrence Livermore National Laboratory (LLNL or Laboratory) sought by the Petitioner, is an appropriate unit for representation under the Higher Education Employer-Employee Relations Act (HEERA).¹

¹HEERA is codified at Government Code section 3560, et seq. All references are to the Government Code unless otherwise specified.

We have reviewed the ALJ's decision in light of the parties' exceptions and responses thereto, and the record as a whole, and we find that his decision should be affirmed consistent with the discussion below.

PROCEDURAL HISTORY

When HEERA became effective, PERB conducted a series of hearings for the purpose of establishing appropriate units for employees of the University of California.² Using the

²Section 3579 of HEERA provides in part:

(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.

(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,

standards set forth in section 3579, the Board created separate units for employees at LLNL, including units of service employees and technical employees, among others. In The Regents of the University of California. Service (1982)

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.

.

(f) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (d) and (e) of Section 830.2 of the Penal Code.

PERB Decision No. 245-H, the Board placed the PSOs at LLNL in the unit of service employees, despite the petition of the Union to represent PSOs in a separate unit.

An election subsequently was held in the service unit, and no representative received a majority of the votes cast. After the 12-month election bar expired, the Union again petitioned to represent the PSOs in a separate unit. The University responded, doubting the appropriateness of the unit. The regional office issued an Order to Show Cause why the petition should not be dismissed, based on the Board's previous finding that such a unit was inappropriate. In response, the Petitioner submitted materials to support its claim that the employment conditions of the PSOs had so changed since the first hearing that a separate unit was warranted. The regional director directed that a new hearing be held to determine the appropriateness of the unit. The hearing was held in May of 1985, and the ALJ issued his decision in September of 1985 finding that a separate unit is appropriate.

EARLIER BOARD DECISION

In the original unit hearing, held in 1980, four witnesses testified concerning the PSOs. Their testimony indicated that PSOs had not had peace officer status since 1974, but were authorized to carry guns pursuant to the Atomic Energy Act of 1954. They received approximately 200 hours of training after hire, and were required to secure the same "Q" security

clearance required of all employees. Their duties consisted of clearing badges at entry points, escorting personnel without security clearances, disposing of classified documents, and performing motor and foot patrols and traffic duty. Their primary mission then, as now, was to protect the Special Nuclear Materials (SNM) housed at the Laboratory.

The Board held that section 3579(f) requiring separate units for peace officers did not apply, since the PSOs are not peace officers within the quoted sections of the Penal Code. The Board went on to find that the policy of placing guards in a separate unit, articulated in Sacramento City Unified School District (1977) EERB Decision No. 30, was not applicable.

(Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board). In so finding, the Board explained that the policy of placing guards in separate units was established to guarantee the employer a group of employees whose loyalty was not undermined by inclusion in a unit with other employees. Since the University did not seek a separate unit for the PSOs and, in fact, opposed the creation of such a unit, the Board found the policy inapplicable.

The Board cited its decision in Sweetwater Union High School District (1976) EERB Decision No. 4 in holding that the hallmark of service employees is the performance of routine manual labor. It found that PSOs were relatively unskilled employees, like other service employees. They performed, for

the most part, routine physical tasks, and shared common interests and working conditions with other employees. The Board found that a separate unit would be inappropriate, with little to be gained from further fragmentation of the unit.

POSITIONS OF THE PARTIES

In the instant case, the University argued before the ALJ that the petition should be dismissed, since PERB's initial policy was to find broad generic units appropriate, rather than narrow ones. Further, here the Board previously found a separate unit of PSOs to be inappropriate. UC contended that any changes in circumstances did not warrant a separate unit. It mentioned in passing on the last day of the hearing that, if inclusion in the service unit was found to be inappropriate, PSOs should be placed in the technical unit.

The Petitioner claimed that the Board's initial determination was wrong, since the policy against guards in a unit with other employees should be followed here. Even if the Board's interpretation were correct at the time, however, the Union argued that subsequent changes in circumstances in the job of protective service offices warranted a separate unit for those employees.

DISCUSSION

The ALJ's findings of fact are free from prejudicial error, and we hereby adopt them as the findings of the Board itself.

Initially we agree with the ALJ that the Board's previous decision is binding only to the extent that circumstances and

Board precedent remain the same. Unit determinations are not intended to be fixed for all time and, where no representative is in place, it is appropriate to consider a claim that circumstances have changed. Here the Union has demonstrated substantial changes in the duties and job conditions of PSOs since the original unit hearing in 1980.

The University is moving toward a more professional security force in response to the threat of terrorism, and, toward that end, has taken steps to upgrade the training and sophistication of the PSOs. PSOs receive more training and perform different kinds of duties (e.g., the special emergency response team, canine team, technical sweeps, etc.) than they did previously. The University argues that the duties of the PSOs are the same as always: protection of SNM in general, and access controls, badge checks, patrols, etc. in specific areas. This argument overlooks the substantial alteration in the manner in which those very general duties are conducted. We find that circumstances have indeed changed since 1980, justifying a reexamination of the separate uniting of the PSOs.

The Petitioner argues that PSOs should be considered peace officers subject to section 3579(f) of HEERA. That section essentially follows the National Labor Relations Act in requiring that guards be placed in separate units. As the ALJ points out, however, the statute is quite specific in requiring

that the groups to be placed in separate units are peace officers pursuant to designated sections of the penal code.³ PSOs are not actually covered under Penal Code 830.2, even though they function in many respects as peace officers. Therefore, HEERA does not require that they be placed in a separate unit.

A more interesting question is raised by the Petitioner's argument that the Board should reconsider its decision not to follow the Sacramento City Unified School District, supra, policy of placing guards in a separate unit, even in the absence of a statutory requirement to do so. In the initial unit determination case, the Board found that policy to be for

³Section 830.2 of the Penal Code provides in pertinent part:

The following persons are peace officers whose authority extends to any place in the state:

.

(d) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

.

(e) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of any such peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

the benefit of the employer, and not applicable here since the employer did not seek a separate unit.

It is unnecessary, however, to reconsider that issue in this decision because, following the analysis of the ALJ in applying the criteria set out in section 3579(a) of HEERA, we find that there is a sufficient community of interest among the PSOs to warrant a separate unit. They share common supervision with other employees only at a fairly high level, and their selection process is unique as is their training. They learn skills foreign to other employees, and their duties overlap with other employees only minimally. They are subject to fitness standards set by the Department of Energy which are unique to them. We agree with the ALJ that the bargaining history neither is sufficient alone to justify a separate unit, nor undermines the rationale for establishing one. The factors leading to a separate unit of PSOs would not compel the establishment of other new units, so that proliferation of units would not be a problem. A unit of 220 is quite workable, and no evidence was presented to show that the existence of one or more units would unduly inconvenience the University.

The University argues that the PSOs do have common supervision with other employees; for example, when there is a spill, they work with other employees to minimize the hazard and clean it up. UC argues also that duties do overlap; for example, testimony indicated that other employees provide

escort service when no PSO is available, and custodians may destroy low-level, as opposed to classified, confidential materials, without PSO supervision. It is true that PSOs interact with other laboratory employees and occasionally may perform a few of the same tasks. It is incontrovertible, however, that the bulk of PSO time and effort is spent on matters unique to them.

The University argues that if PSOs are found to be inappropriately placed in the service unit, they should be placed in the technical unit. It bases this argument on the fact that technicians, like PSOs, are skilled personnel and their duties are more like those of PSOs.

This position by UC was obviously an afterthought.⁴ It was urged in a footnote only in the University's post-hearing brief to the ALJ and in a paragraph in its reply brief. The ALJ treated it rather summarily, finding that the issue had not been fully litigated. Having lost on the issue of the service unit before the ALJ, the University now urges the Board to put PSOs in the technical unit.

⁴This issue was first raised by counsel for the University in the afternoon of the last day of the hearing. While there had been some general testimony about the duties of technicians, mixed in with substantial testimony about the training, duties, etc. of other service employees, neither the University's papers, nor counsel's representations to the ALJ ever implied that the issue would be raised before the Board itself.

The University argues that certain technicians, like PSOs, are on duty in 24-hour shifts and that they respond to alarms just like PSOs. Some technicians, like PSOs, travel off site to respond to requests. (The Laboratory has nuclear emergency teams which may go anywhere in the world to help with a nuclear emergency.) UC argues that the training for firefighters (who are in the technical unit) is like that for PSOs, and that some technicians are recruited on the basis of military experience. PSOs also do work that is integrated in many ways with the technical work done throughout the laboratory. The University finally argues that the Board has previously found in favor of broad generic units and that placement of the PSOs in the technical unit would therefore be appropriate.

In making this argument, the University misconstrues the nature of this proceeding. The petition under review here is one to represent the PSOs separately, and the hearing was convened to determine whether a separate unit of PSOs is appropriate under HEERA. No petition to represent a technical unit which would include PSOs has been filed. There is no point in considering a change in the unit location of these employees when there is no petition at issue pursuant to which employees may be represented. If a separate unit of PSOs is not appropriate, they should remain in the service unit for the time being, since no one else is seeking to represent them anywhere else. The sole question here, then, is whether a unit of PSOs is appropriate.

In answering this question, we find only that a separate unit is an appropriate unit. As noted by the Board in connection with another unit at LLNL, it "may not be the ultimate, best or only appropriate configuration,"⁵ but we find, based on the statutory criteria, that it is an appropriate unit.

Even if we were to consider the University's argument that PSOs belong in the technical unit, we do not believe the record compels such a conclusion. The ALJ found that the issue was not fully litigated; we find simply that the University did not establish on the record presented that a technical unit at LLNL which include PSOs is appropriate.

ORDER

For all of the foregoing reasons, and after a thorough review of the record, we find a separate unit of protective services officers at the Lawrence Livermore National Laboratory to be an appropriate unit under the Higher Education Employer-Employee Relations Act.

Chairperson Hesse and Member Craib joined in this Decision.

⁵The Regents of University of California Professional Scientists and Engineers (LLNL) (1982) PERB Decision No. 246-H,

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



LABORERS INTERNATIONAL UNION.)
LOCAL 1276. AFL-CIO.)
)
Petitioner.) Representation
) Case No. SF-R-668-H
)
and)
)
)
REGENTS OF THE UNIVERSITY OF) PROPOSED DECISION
CALIFORNIA.) (9/12/85)
)
Employer.)
_____)

Appearances: Mary C. Mocine (Mocine & Eggleston) representing Petitioner; Jerrold C. Schaefer (Hanson. Bridgett. Marcus. Vlahos & Stromberg) for the Regents of the University of California.

Before: James W. Tamm, Administrative Law Judge.

HISTORY OF PETITION

On July 1, 1979, the Higher Education Employer-Employee Relations Act (HEERA)¹ became effective. Subsequently, the Public Employment Relations Board (PERB or Board) held hearings concerning proper unit placement for most employees of the Regents of the University of California (hereafter University), and Board decisions were issued. In Unit Determination For Service Employees of the University of California (1982) PERB Decision No. 245-H, the Board created a unit for service employees at the Lawrence Livermore National Laboratory

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

This Board agent decision has been appealed to the Board itself and is not final. Only to the extent the Board itself adopts this decision and rationale may it be cited as precedent.

(hereafter LLNL or Laboratory). The Board included protective service officers (PSO's) within that service unit, despite a request by the Laborers International Union Local 1276, AFL-CIO (hereafter Petitioner or Laborers) that a separate unit be established at LLNL for PSO's.²

Secret ballot elections were ordered and held in 1983 for most nonprofessional employees of the University. In an election conducted by the PERB for employees in the service unit at LLNL, no employee organization received a majority of the votes cast, and thus no organization was certified as the exclusive representative for that unit.³

Pursuant to Section 3577(b)(2).⁴ new petitions are barred for 12 months following such an election. On August 17, 1984, shortly after the 12-month election bar expired, the Petitioner

²PERB Case No. SF-PC-1005.

³PERB Case No. SF-HR-10.

⁴Section 3577(b) states in pertinent part:

No election shall be held and the petition shall be dismissed whenever:

.

(2) Within the previous 12 months either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) of Section 3577 were cast for "no representation."

filed the instant Request for Recognition seeking a unit of PSO's at LLNL. The University filed its response on October 8, 1984, in which it doubted the appropriateness of the unit requested.

On October 30, 1984, the PERB San Francisco Regional Director issued an Order to Show Cause as to why the petition should not be dismissed as inappropriate pursuant to the Board's earlier decision that PSO's belonged in an LLNL service unit. In a response to the Order to Show Cause, Petitioner alleged that certain changes to employment conditions of PSO's were sufficient to warrant the establishment of the requested unit. On February 11, 1985, the PERB San Francisco Regional Director ordered that a hearing be held to determine the appropriateness of the request for recognition.

An eight-day hearing was concluded on May 3, 1985. A transcript was prepared, briefs were filed, and the case was submitted for decision on July 3, 1985.

EARLIER BOARD DECISION

Before discussing the facts as they currently exist, it is helpful to review the Board's earlier decision regarding PSO's. During the earlier proceeding, the petitioner took the position that it was appropriate for PSO's to be in a separate unit. Another petitioner, the California State Employees Association and the University each took the position that PSO's should appropriately be included in an LLNL service unit.

In the hearing itself, four witnesses testified regarding PSO's. Their total testimony was slightly less than 75 pages of transcript. The previous record established that prior to 1974 PSO's had peace officer status.⁵ After 1974 only sergeants and lieutenants retained peace officer status. However, pursuant to the Atomic Energy Act of 1954, PSO's continued to carry firearms and were authorized to make arrests. However, in so doing they were acting essentially as private citizens rather than peace officers.

After PSO's were hired, they received approximately 200 hours of training, consisting of 80 hours of classroom training, 40 hours of firearms training, and 80 hours of on-the-job training. PSO's were required to obtain the same security clearance as all other Laboratory employees.

PSO's worked all three shifts, and their duties included checking clearance badges at entry points, escorting uncleared persons through the facility, securing classified information from view of uncleared persons, classified document destruction, performing foot and motor patrol, traffic control functions including escort of hazardous and toxic materials, and in the event of a spill of toxic materials, establishing traffic barriers in the area of the spill.

⁵Pursuant to subdivisions (d) and (e) of section 830.2 of the Penal Code.

In its decision, the Board made several findings. The Board found it was appropriate to have employees of LLNL excluded from systemwide units, thereby rebutting the presumption of section 3579(c).⁶ Also, in PERB Decision No. 242-H, regarding craft units, the Board held that:

. . . the unique nature of the work carried on at the Laboratory distinguishes it from the rest of the University operations as well as from the Lawrence Berkeley Laboratory. The primary activity of the facility is nuclear weapons research for the federal government. The extent to which radioactive and other hazardous materials are used creates unique problems for the employees. Security requirements pervade the entire work environment; for example, as a condition of employment, all Laboratory employees must obtain security clearance.

The Laboratory is almost exclusively funded with federal revenues and operates under a contract with the United States Department of Energy (DOE). For this reason, the Laboratory is not primarily dependent upon the State Legislature for its financial resources as is the case with the other University operations. Cf., Peralta Community College District (11/17/78) PERB Decision No. 77.

⁶Section 3579(c) states:

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.

Personnel policy is governed by a contract between the University and DOE. The University, for example, must obtain DOE approval for significant personnel decisions including affirmative action plans, salary increases, and changes in classification specifications. The Laboratory's classification scheme is different from the rest of the University and, while some classifications parallel those elsewhere, many are unique to the Laboratory.

The Board also held that section 3579(f),⁷ requiring separate units for peace officers did not apply because PSO's no longer had peace officer status under the Penal Code.

The Board declined to follow its precedent regarding separate guard units established in Sacramento City Unified School District (1977) EERB (PERB) Decision No. 30.⁸ In Sacramento City the Board established a separate unit of security guards, stating:

The employer is entitled to a nucleus of protection employees to enforce its rules and to protect its property and persons without being confronted with a division of loyalty inherent in the inclusion of security officers in the same unit with other classified employees.

⁷Section 3579(f) states:

The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (d) and (e) of Section 830.2 of the Penal Code.

⁸At that time PERB was the Educational Employment Relations Board (EERB).

In the Service Employees (supra) decision the Board held that the policy of providing separate units of guards is for the benefit of the employer, and that since the University did not want a separate unit of guards, there was no reason to apply that policy.

Citing Sweetwater Union High School District (1977) EERB Decision No. 4. the Board held that the hallmark of service employees is the performance of routine manual labor, the primary purpose of which is to provide a proper physical environment and support services for students. Thus, while their duties may vary, the working conditions of service employees are similar. They share a strong functionally-related community of interest in that they perform physical laboring tasks to maintain the campus physical environment for which the required levels of skill and training do not greatly differ.

The Board stated that, like other service employees which the petitioner also sought to represent. PSO's are,

. . . relatively unskilled employees performing for the most part routine physical tasks.

and that,

. . . because of the routine physical nature of their work, they generally share common interests and working conditions with other service employees.

The Board further held that a separate representational unit for PSO's would be inappropriate, with little to be gained

which would offset the negative effects of fragmentation and proliferation of units. The Board concluded that in view of the Laborers' petition to represent other service employees at LLNL, a single unit of LLNL service employees, including PSO's, was appropriate.

POSITION OF THE PARTIES

In the instant case, the University takes the position that the Laborers' petition should be dismissed for several reasons. The first is that during the initial unit determinations PERB fashioned broadly-described generic units and dismissed petitions for narrow single classification units. Second, that PERB specifically found that a separate representational unit for PSO's at LLNL was inappropriate. Finally, the University argues that any changes in circumstances which have occurred since the initial unit determination hearings do not warrant the establishment of a separate Laboratory PSO unit.

The Petitioner, on the other hand, argues that the Board's initial unit determination should be reconsidered for two reasons. First, the Board incorrectly declined to apply the policy developed in Sacramento City Unified School District, supra, in favor of having separate units for guards. The other reason for reconsidering the Board's decision is that since the earlier hearings, circumstances have changed and that, even if it once was the case that PSO's were "relatively unskilled

employees performing for the most part physical tasks," that is no longer the case.

FINDINGS OF FACT

Operations of the Laboratory

LLNL is one of three research laboratories operated by the University under contract between the University and the U.S. Department of Energy (hereafter DOE).⁹ Since its establishment, the Laboratory's primary purpose has been the design of nuclear weapons. Most of the research at the Laboratory is classified and much of the research utilizes toxic and hazardous substances, including special nuclear materials. Access to and throughout the Laboratory is restricted and virtually all employees must receive a special security clearance known as a "Q clearance."

The Laboratory also runs an offsite explosive test area known as Site 300. This area encompasses ten square miles with access controlled similar to that of the Laboratory.

There is a director of the Laboratory appointed by the president of the University, a Laboratory associate director, ten associate directors for programs and departments, and two associate directors at large. Some of the associate directors are functional or operational, and some direct programs.

⁹The other two are Lawrence Berkeley Laboratory whose employees are included within systemwide University bargaining units, and Los Alamos National Laboratory in New Mexico, which is not covered by HEERA.

Program associate directors are responsible for technical aspects and funding of various jobs and programs at the Laboratory. Functional or operational associate directors are responsible for providing the capability for completing jobs (e.g.. providing engineers, technicians, physicists, etc.). Some of the directors have both functional and programmatic responsibility.

The Laboratory associate director is James Kahn, who is second in command at the Laboratory. Kahn is in charge of the technical services program, which includes hazards control, the environmental program, health and services, and the safeguards and security program.

The safeguards and security program carried out by the security department reports to John Toman.

Due to governmental concerns that the wave of terrorism in Europe in the 1970's would spread to the United States, and particularly to nuclear facilities in the 1980's. several upgrades have been made in the Laboratory security systems. The Laboratory is currently engaged in a \$35 million security-oriented capital improvement project, and is attempting to get additional money from Congress. The money is to improve alarm systems, upgrade communications, build new security facilities at Site 300, and upgrade the access control system. The additional money beyond the \$35 million is being sought to upgrade the physical security structure of some of

the more sensitive facilities at the Laboratory. The Laboratory also recently purchased 92 acres of land around the Laboratory to establish a buffer zone for security purposes. The Laboratory is planning to increase the size of the buffer zone by an additional 300 acres over the next three years.

The security department is divided into three divisions. The first is the personnel security division which has responsibility for preemployment and other investigations, central clearance, the badge offices and document control. The second is the physical security division with responsibility for physical and offsite security, information and computer security, and communications access control. These first two divisions are staffed for the most part by security administrators who are sworn peace officers, clerical employees and supervisory personnel. None of these employees are covered by the petitioner's request for representation.

The third division within the security department is the protective service division which is the subject of this hearing.

Protective Service Division

The primary mission of the protective service division is to protect special nuclear materials and to ensure adequate protections and safeguards are in effect at all times. The division also provides protection for Laboratory personnel, visitors, property, buildings, equipment and classified interests.

All the PSO's at LLNL work within the protective service division, headed by Larry Chandler, a sworn peace officer. Since the original unit determination hearing, the number of PSO's has increased approximately 25 percent, from 156 to 196.

Prior to 1982 applicants for PSO positions were initially screened by the human resources staff to determine whether the applicants met minimum qualifications. Applicants were then interviewed by a lieutenant and were required to fill out a security questionnaire. Offers of employment were then extended.

In 1982 the process was changed to add a University police department background investigation/verification of employment that is specific to PSO's. Applicants are also now required to undergo a written psychological profile and be interviewed by a psychologist. The interview process has also changed. New PSO applicants are interviewed using a process known as behavioral events selection interview (BESI). In the BESI process, a panel of three interviewers tries to measure an applicant's characteristics by questioning him or her about previous real-life stressful experiences and having the applicants explain how they handled the situations. These additions to the hiring process are not required for any applicants other than PSO's.¹⁰

¹⁰These examinations and BESI interviews are also given to applicants for PSO positions at Lawrence Berkeley Laboratories.

PSO applicants at LLNL must also pass a DOE physical fitness test not given to any other Laboratory employees. Details of this requirement will be discussed in a latter section of this decision. Transferees into the division go through basically the same process as outside applicants.

The hiring process for members of the service unit remains the same as it was for PSO's prior to 1982. There was testimony, however, that at least one group of employees outside the service unit, firemen, have had a three-member oral interview process, a physical ability test, and a written examination. This process was a cooperative effort to establish an eligibility list for both the City of Livermore and the Laboratory fire departments.

The Laboratory advertises for PSO's in the San Francisco Chronicle, the Oakland Tribune, and the San Jose Mercury News. The Laboratory has also recruited PSO's from the military. No other members of the service unit are recruited by such methods.

Training

One area in which there has been a dramatic change since the initial unit hearings is in the training given PSO's. At the time of the initial unit determination hearings. PSO's received approximately 200 hours of training. This training was in two phases. The first phase occurred at the time of initial hire and consisted of 40 hours each of classroom training, firearms training, and on-the-job training.

The second phase of training took place after the PSO received a Q clearance. It consisted of another 40 hours each of classroom training and on-the-job training in the classified areas of the Laboratory.

Now newly-hired PSO's complete an increasingly sophisticated training academy identical in many respects to a police academy. The academy itself lasts seven weeks. Following completion of the basic academy, PSO's complete an additional six weeks of field training on all three shifts. Supervision during the field training has also increased, with a field training officer filling out daily observation reports on the trainee.

Following receipt of a Q clearance, the PSO receives an additional four weeks of field training. Daily observation reports are also used during this period.

Thus, the training time has increased from 200 hours to almost 700 hours, or almost 350 percent. However, the length of the training is not the only change. The extent of the training has also increased. One example illustrating this change is that PSO's now train using a system known as the multi-integrated laser engagement system (MILES). This extremely expensive system was developed by the military in the mid-1970's to simulate live fire scenarios. Small lasers are attached to various weapons. The lasers have essentially the ballistic characteristics of the weapon to which they are

attached. When a blank round of ammunition is used, a laser beam impulse is sent out. Security forces participating in the exercise wear special harnesses. When there is a near-miss, the laser causes the harness to emit a chirping noise. When the laser beam scores a direct hit, it causes the harness to emit a steady tone. Thus, PSO's gain experience similar to real attacks on the Laboratory.

In 1984 the DOE intensified its security inspection and evaluation efforts. The inspections now are more performance-oriented. As a result, the Laboratory has entered into a concentrated training mode in preparation for the yearly DOE inspections. The training has included force-on-force exercises where certain PSO's act as an adversarial force trying to breach the Laboratory security. PSO's also have been sent to other DOE facilities as part of inspection teams. PSO's participate as an adversary force in a force-on-force exercise at the other facilities.

In preparation for demonstrations, PSO's have also received specialized training in crowd control and arrest methods. One witness who had also been trained in crowd control by the Alameda County Sheriff's Department, testified that the training he received at the Laboratory was superior to that at the Sheriff's Department.

PSO's have received specialized training for the Laboratory's executive protection program, which is designed to prevent the kidnapping of high-level Laboratory officials.

PSO's also receive much specialized training in other areas such as canine units, hostage negotiations, technical sweeps of meeting rooms requiring special security, and SERT techniques.¹¹ This specialized training will be discussed in greater depth later in the decision.

Of course, other employees at the Laboratory also receive training. However, the record does not support a finding that the training is in any way comparable. For example, the University submitted evidence that employees such as gardeners received training on pesticides, or that custodians received training regarding the proper use of cleaning chemicals and methods. However, the time spent in training, the quantity and complexity of information received, and the liability to the Laboratory for improper training all pale by comparison with PSO training.

Hours

Once PSO's complete their training, they are assigned to one of three shifts. Day shift is from 7:00 a.m. to 3:30 p.m.. swing shift from 3:00 p.m. to 11:30 p.m.. and the owl shift from 11:00 p.m. to 7:30 a.m. PSO's are given 30 minutes for lunch. However, they are often on call and are therefore often paid during lunch. Most other Laboratory employees work 8:00 a.m. to 4:45 p.m., with a 45-minute lunch break. The

¹¹SERT is the Laboratory equivalent of a swat team.

staggered shift starting times allow PSO's to report to the squad room for their roll call meeting and still be in place at their assignments when other employees change shifts.

PSO's report to a squad room prior to their shift where they receive information about assignments and other orders or bulletins. Overtime is mandatory for PSO's and is assigned on a draft system based upon the amount of overtime the PSO worked during the previous week. PSO's are the only group of employees on such an overtime system.

Salary

Wage and salary ranges for all employees at the Laboratory are set forth in the University's contract with the DOE. The ranges are established by a process which uses salary committees appointed by the Laboratory. The committee responsible for salary ranges for PSO's is also responsible for those of mechanical and electrical technicians, hazard control technicians, environmental technicians, fire fighters, gardeners, custodians and laborers.

Transfers

Since 1980 almost 30 PSO's have transferred into other positions at LLNL. Of those, however, only three have transferred into positions within the service unit. Since 1980 only three individuals have transferred into the PSO position from other positions at LLNL. Of those three, one had been a PSO years earlier. Only one of the three had been employed in a position within the service unit.

Equipment

All PSO's have certain equipment necessary to perform their duties. PSO's wear uniforms very similar to those worn by police officers. Recent changes have been made in parts of the uniform for tactical reasons. For instance, rain gear has been changed from yellow to black because it is easier for PSO's to conceal themselves in black if they are engaged in a tactical maneuver. The color of patches used has also been changed from yellow to blue for the same reasons.

PSO's carry a police revolver, two speed loaders, police baton, a radio, mace, knife, handcuffs and badge. Prior to mid-1980, PSO's did not carry speed loaders, handcuffs, mace, nor a baton.

Since the time of the initial unit determination, the fire power of PSO's has increased. Shotguns have been added to the regular complement of patrol cars, and PSO's must qualify not only with their revolvers but with an H&K automatic weapon, a 12-gauge shotgun, and must be familiar with the H&K model 20 light machine gun.

PSO's are also trained in the use of an armored personnel carrier known as a "peacekeeper." The vehicles are armed with H&K model 33 automatic weapons, and are being prepared for installation of an H&K model 21 light machine gun. Prior to 1980, these were operated only by supervisors and sworn peace officers. Prior to 1980 patrol vehicles had only yellow

caution lights without police package red lights. The patrol cars currently used at the LLNL resemble police cars in every manner. At Site 300. Ford Broncos equipped with police package red lights are used. The Ford Broncos are also equipped with H&K 33 automatic weapons, shotguns, police radios, and loudspeakers.

The department also has use of helicopters as a surveillance tool. PSO's are used as helicopter observers in order to spot aggressors or fleeing individuals. The Laboratory has also recently purchased an X-ray machine to aid in searches.

Special teams such as hostage negotiators, canine units, and SERT team members carry other specialized equipment as well as the standard equipment listed above. That will be discussed in greater detail later in the decision.

DOE Medical and Physical Fitness Standards

In December 1984 the DOE adopted certain medical and physical fitness standards applying only to PSO's. For example, in meeting the defensive combative standard. PSO's must be able to run 40 yards starting from a prone position in 8 seconds, and run one mile fully equipped in 8 minutes and 30 seconds.

These standards were adopted because, according to the DOE:

Recently. DOE has evaluated its security operations and concluded that the increasing threat of terrorist, paramilitary and other criminal as well as civil threatening

activity requires that DOE strengthen its security capabilities. DOE believes that medical and physical fitness of protective force personnel is essential to its security operations, and thus to the country's common defense and security. Furthermore, DOE believes that its protective force personnel, and especially its security inspectors, must be in good physical condition in order to withstand terrorist or other adverse activities.

Implementation of the standards begins with a medical exam through the Laboratory medical department. It may also include individually supervised exercise programs through Cal State University at Hayward prior to taking the physical fitness test itself. If PSO's are not allowed to take the fitness exam due to medical restrictions, there is an appeal process. If a PSO takes the exam and fails, there is a grace period for extra conditioning. PSO's are required to re-test and meet the standards on an annual basis thereafter. If employees ultimately do not qualify, they would be removed from any armed position.

As of March 1985, 189 PSO's have taken the physical examination. Thirty-one have been cleared to take the physical fitness test, and 97 have been cleared to participate in physical fitness training programs at California State University, Hayward. Thirteen PSO's were found to be medically restricted, and 36 were awaiting further medical evaluation. At the time of the March report, only 20 PSO's had passed both the medical and physical fitness qualifying standards.

As a result, there is no doubt that some PSO's will lose their jobs as they currently exist. The Protective Service Division has identified approximately 24 positions which may be converted to unarmed positions in an attempt to absorb some of those not able to meet the qualifying standards.

Duty Assignments of PSO's

The division's general order #1, revised in 1977, sets forth the regular activities of the division to include (1) control of access to the Laboratory Site and to Limited and Exclusion Areas; (2) immediate response to Protective Alarm Systems; (3) patrols and surveillance, both on foot and by vehicle; (4) inspection of buildings and areas during off-shift hours; (5) response to calls related to accidents, injuries, fires and complaints; (6) enforcement of the laws of the Federal Government, State and County, and rules and regulations of the University of California including the Laboratory's traffic and parking regulations; (7) escort of visitors, construction or other personnel as necessary; (8) maintenance of order at all times; (9) arrests and related court appearances, under appropriate circumstances; (10) inspection of vehicles, containers and persons for contraband items under appropriate circumstances; (11) destruction of classified documents as directed; (12) investigations and reports as required.

Access control is a major function of PSO's and has continued much the same as in the past. The Laboratory has

various areas of differing security levels. Areas containing special nuclear materials are naturally the most restricted. Due to a great deal of expansion at the Laboratory, the number of different security areas has increased, but the basic concept has remained the same. PSO's staff guard houses and check each individual entering to ensure they have security clearance. PSO's must know the various security areas and various badge requirements for those areas.

When an individual who is not cleared for various security areas needs access to them, the individual must be accompanied into the security area by an escort. An example would be a building contractor doing construction work inside the security area. PSO's must not only accompany non-cleared individuals, but must also check the area for security problems. This can entail a preview of the area to ensure that confidential documents are not exposed, safes are locked, doors are closed, etc. Although this function is supposed to be done by PSO's or security administrators (peace officers), lately the PSO's have been too busy to do all the work and others have had to fill in. This arrangement is expected to be temporary until PSO's can resume all escort duties.

An extremely sophisticated badge identification system is currently being planned by the Laboratory. The Secure Integrated Livermore Alarm System (SILAS) will increase the security. However, the system will be maintained by

technicians rather than PSO's. Although procedures for PSO's may be somewhat altered under the new system, their basic duties regarding access control should not change appreciably.

As part of the access control function, PSO's also conduct searches of vehicles and hand-carried packages entering the Laboratory. This function is not new, although the frequency and extent of searches has increased since the new procedures were implemented in October 1984. Since October 1984, searches using metal detectors have been conducted on a random basis. These searches have, in fact, discovered substances unlawful to bring onto the Laboratory premises.

PSO's also maintain regular foot and motor patrols. Foot patrols include duties such as checking building locks and checking interiors to ensure no confidential documents have been left out. If documents are left out, the PSO takes the document and makes out a security report. Motor patrols are done in the Laboratory police cars and also include patrols on the public perimeter roads outside the Laboratory.

The Laboratory maintains an extensive protective alarm system, including many types of alarms. When alarms go off, PSO's initiate a tactical response to the alarm. A tactical response is one in which PSO's use techniques of cover and concealment in order to best observe the area or surprise an intruder. Many of the techniques are military combat techniques.

PSO's also perform traffic control functions at the Laboratory, including accident investigations and issuing parking citations and moving violations. If a Laboratory employee receives three or more tickets, a report goes to the employee's supervisor who may take disciplinary action if he/she feels it is appropriate. There were, however, no specific examples of any Laboratory employees being disciplined for parking violations. Traffic officers also investigate accidents off the Laboratory premises if Laboratory vehicles or Laboratory personnel are involved. PSO's have also assisted local law enforcement agencies with traffic control functions outside the Laboratory when traffic lights go out during demonstrations or when accidents occur.

In 1983 eight PSO's were sent to a special traffic school at Los Medanos College. The class involved demonstration and classroom instruction regarding investigation and documentation of traffic accidents. The PSO's from the Laboratory were the only attendees who were not sworn peace officers. All of the attendees received college credit for the course.

PSO's are also responsible for the destruction of classified documents. At scheduled intervals. PSO's collect large amounts of documents and transport them to a huge shredder. Depending upon the nature of the documents. PSO's either feed the material into the machines themselves or supervise custodians who feed the documents into the machine.

Although the amount of this work has increased since the earlier hearing and the procedure has become more formal, the function itself has remained much the same.

The heart of the division's communication system at the Laboratory is the console, which is staffed by PSO's. Console operators check employees in and dispatch officers to respond to alarms and complaints. They also receive all of the calls of PSO's on patrol. The console is the communication center for the command centers for demonstrations and crises at the Laboratory. Console operators also operate surveillance cameras to assist PSO's in the field. Since 1980 the number of such cameras has increased by two and one-half times. The number of TV booths has also risen from 7 in 1980 to 47 currently. The number of motion detectors has also increased dramatically.

The console is tied in with the police information network (PIN) which includes other law enforcement agencies and their computers, and the National Crime Information Center of the Department of Justice. This enables console operators to run warrant checks. Although PIN existed previously. PSO's did not have access to it until 1981. when the Laboratory first obtained the necessary equipment. Console operators receive three days of training on the equipment. The PSO's taking the training were the only attendees who were not sworn peace officers.

Prior to 1981 there were no written instructions for operation of the console. At that time a console instruction book was first created. The document has proven to be insufficiently detailed, so a new console training document is currently being prepared.

Within the last two years, the security surrounding the console itself has also been upgraded. The entire area housing the console has been "hardened." Heavy steel doors with an electric catch replaced a pull-type swinging door. Previously the building itself was not locked. Now a camera system has been installed and the building has been locked down, with access only by key or at an entry point by a sergeant's office.

During demonstrations, PSO's play a major role in crowd control and arrests. Prior to 1982 there had not been any major demonstrations at the Laboratory requiring such efforts. Prior to 1980, trespassers were generally escorted off the premises after identifying themselves. Now trespassing usually leads to arrest. PSO's have participated in tactical teams for crowd control during demonstrations, and they arrested and forcibly removed demonstrators from the premises. PSO's booked individuals, filled out arrest reports, searched individuals, fingerprinted and photographed them. They also have transported those arrested to local jails and juvenile halls. In conjunction with demonstrations, they essentially do all the work commonly done by deputy sheriffs or other peace officers.

In keeping with their responsibility to enforce the laws. demonstrations are not the only time when PSO's make arrests. There was testimony by PSO's about a 1984 arrest involving a stolen vehicle, another for possession of illegal drugs, and another for drunk driving and failure to appear.

Since 1980 PSO's have been sent off-site to assist other agencies and DOE facilities. For example. PSO's were sent to Los Angeles to assist in security for the Olympics. In 1983. 50 PSO's were sent to U.C.L.A. to assist in security for a large Iranian demonstration. In April 1985 PSO's were sent to the University's Berkeley campus to assist with anti-apartheid demonstrations. PSO's have also assisted other DOE facilities such as Savannah River (Georgia). Oakridge (Tennessee), and Sandia Laboratories, adjacent to LLNL. Canine units have also been sent to assist the Livermore police department and the Alameda County sheriff's department.

Individual PSO's have been assigned a variety of assignments such as teaching weaponless self defense, field training officers, firing range masters, affirmative action coordinator, giving security briefings to new Laboratory employees, and performing some of the functions of an armorer.

PSO's have also attended communication circles which occur approximately once a month. At the communication circles PSO's discuss with security department management issues which concern PSO's, such as the DOE physical fitness standard.

Although other employees sometimes meet in groups to discuss safety issues or the implementation of new equipment or processes, the communication circles appear to be unique to PSO's.

Specialty Functions

In 1981 the Laboratory established a PSO special emergency response team (SERT). SERT is the Laboratory equivalent to a SWAT team. SERT members are selected after a written psychological examination and an interview with a three-member panel. SERT members are on call and rotate every week, so that a team is always available. Slightly over 10 percent of the PSO's are assigned to SERT.

SERT members receive special training on a regular basis. Team members received initial training from one of two facilities utilized by the Laboratory. The first was a SWAT academy run by the FBI and the second was a DOE academy, where future training will also take place.

Testimony regarding the FBI SWAT academy indicated that the basic thrust of the training was how to neutralize a situation where an individual or a group has taken hostages. When everything else has been tried, the last resort would be to enter the area and kill the hostage-takers without harming the hostages. To that end, members learn skills such as repelling out of windows, off buildings or from a helicopter, entering buildings and taking positions both as individuals and teams

without being seen, and entering rooms to kill the hostage takers. Trainees also received additional weapons training including a combat stress course where the officer must determine in a limited number of seconds whether the target is friendly or an enemy.

In contrast to the FBI training, the DOE training is much more of a military approach. Although many of the same skills are taught (such as repelling, etc.), the tactical approach is different. This is because the DOE's main concern is the protection of special nuclear materials, rather than concerns regarding hostages, a typical SWAT team concern. For Laboratory purposes, the DOE training has made the FBI SWAT training somewhat outmoded. This shift in emphasis on training is consistent with the underlying need for such teams at the Laboratory. SERT was initially established out of concern that an employee could have mental problems and take hostages. That concern now seems to be overshadowed by a fear of terrorists seizing special nuclear materials.

PSO's on SERT duty are required to carry a pager and must be able to respond to the Laboratory fully equipped within one hour. They are not allowed to drink alcohol or travel outside that one-hour radius during the time they are on call. SERT team members have special insurance provided for them by the Laboratory.

SERT members are assigned special equipment. They have a special type of microphone known as a lip-mike in order to free

their hands from radio operations. They also carry repelling ropes, Swiss seats, gas masks, bullet-proof vests, fishnet-type vests with compartments, special handcuffs, rechargeable flashlights, door jammers and mirror devices. SERT members also have special weapons such as the MP 5 submachine gun with a silencer, and an H&K-33 automatic weapon. The SERT team also has sniper rifles with scopes and tripods. The team also has a van with a set of programmable and voice confidential radios.

If hostages are taken, the department has PSO's trained as hostage negotiators. Hostage negotiation teams began some time after 1981. Negotiators set up equipment to enable them to talk to the hostage-takers and negotiate with them, attempting to neutralize the situation without anyone being hurt. They also work closely with SERT, gathering information for SERT in case negotiations fail.

Negotiators are selected after a written psychological examination and two interviews, one of which is done by a psychologist. Once they have been trained, the hostage negotiators are included on a statewide list so that they may be available to assist other negotiators in hostage situations.

At the scene of an incident, negotiators wear special windbreaker jackets with the word "negotiator" written in large letters on the back. This enables them to be easily identifiable when working in the emergency command center. Negotiators are assigned other special equipment such as tape

recorders, phones and paraphernalia to enable them to hook up to existing phone lines and talk to the suspects.

When the Laboratory conducts a confidential meeting or conference, PSO's may provide security by doing a "technical sweep" of the meeting room. Prior to 1981, PSO's would go into a meeting room and look under chairs and tables for listening devices. They also provided typical security functions such as locking doors, etc. After 1981, specialized training was provided and technical sweep teams were selected. Although the basic function of removing anything which would compromise the confidentiality of the meeting or conference is the same, the sophistication level of the technical sweep has increased. Technical sweep teams have been used in preparation for conferences throughout the state. PSO's may also be called upon to physically guard the premises 24 hours a day for the duration of any conference.

Another special function which is new since the initial unit hearing is the canine unit. First used in 1983. the Laboratory now has three canine units. The dogs are utilized as attack dogs or for protection or tracking. The primary job of one of the canine units is to search for explosives. That particular dog was brought from Holland after months of training, at a cost of \$8,400. The PSO assigned to the dog then spent over a month in intensive training with the dog as a team. The training covered both obedience training as well as explosives work. Follow-up training is done on a monthly basis.

PSO canine officers work different hours than other PSO's. They take their dogs home with them after work, and are responsible for the dog's care, feeding and grooming. The Laboratory provides food and pays for all the veterinary bills.

Canine units use specially marked patrol cars which are also equipped with special radios, so that they may communicate with the SERT team. The explosive unit is also equipped with a small camera for photographing possible explosives.

Other Guard Units

PSO's at the Lawrence Berkeley Laboratory are included within the service unit. The exclusive representative and the University have negotiated a collective bargaining agreement which was less than a year old at the time of the hearing. The petitioner submitted evidence that guards at all other DOE facilities are in separate bargaining units. However, the University put on evidence that security services at those facilities are provided by independent contractors.

DISCUSSION

Unit descriptions are not cast in concrete. Under the circumstances of this case, i.e., where no employee organization received a majority of the votes cast in the earlier election, any employee organization may file a petition to request any configuration of unrepresented employees, including any or all of the employees covered by the earlier Board decision. Such a petition is limited only by the

timeliness requirements of section 3577(b)(2). which prohibit a representation petition from being filed within 12 months of the earlier representation election. The holding of any earlier unit determination decision is binding only to the extent that Board precedent has remained the same, and that the facts as they currently exist compel a similar finding.

In this case, although PERB precedent has remained unchanged, the facts as they currently exist are sufficiently different from the facts upon which the earlier Board decision was based to warrant a different conclusion.

In the earlier decision, the Board, based upon a scant 72-page record, found that PSO's were relatively unskilled employees performing routine physical tasks, creating a common interest with other service employees. A review of the record in the current hearing leads to the conclusion that, because of the threat of worldwide terrorism and the fear that terrorists may try to steal special nuclear materials from DOE facilities, the Laboratory has engaged in a continuing process of developing the PSO's into an increasingly sophisticated paramilitary security force.

Nowhere is this change more evident than in the training PSO's receive. The training currently received is similar, if not identical, to a standard police academy. The quantity of training has increased by 3 1/2 times up to 700 hours, and the sophistication level has also increased. This is not only a

change from previous PSO training, but is also significantly different from training levels of other service unit employees. Although other service employees do receive training (e.g.. custodians regarding cleaning techniques. and gardeners regarding pesticides), the amount and sophistication level of other service employees' training is nowhere comparable to the PSO's. A comparison of the training materials in evidence makes that obvious. While PSO's are being taught how to protect nuclear materials from terrorists, other service employees are taught how to clean a bathroom or spray for bugs. Except for training on items common to all Laboratory employees, there is almost no relationship between PSO training and the training of other service unit employees.

PSO's are now treated differently than other service employees in the manner in which they are recruited, screened for employment, and hired. Their hours of employment are not the same as other employees, nor is the method for assignment of overtime. Although PSO salary ranges are similar to other service employees, no other service employees receive pay for being on call, such as while eating lunch or for SERT team members who are not working but are still on call.

The DOE physical fitness requirements are another crucial change from circumstances as they existed during the initial unit determination proceeding. The fitness requirements are not only evidence of a conscious shift to a more professional

security force, but they also distinguish PSO's from all other Laboratory employees. The requirements will undoubtedly serve to weed out many PSO's unable to keep pace with the revamping of the security force. Only PSO's now face the loss of their jobs on a yearly basis for physical fitness reasons.

The shift to a more professional security force is also evidenced by numerous other changes which have occurred since the time of the initial unit determination. The type and frequency of searches conducted by PSO's, the increasing sophistication of the technical sweep teams, the shift from yellow caution lights to police package red lights on patrol cars, and the increase in sophistication of the department's communication system are all indications of the change in the Laboratory's approach to security. Many of the changes may seem irrelevant when viewed in isolation. For example, a change in the color of the rain gear from yellow to black, or to a darker colored sleeve patch, would be singularly insignificant were it not for the underlying reasons for the change. Black is harder for intruders to spot, providing PSO's another small but important advantage during a tactical assault. Viewed in that light, the change is further evidence of the Laboratory's shift towards a paramilitary security force.

Some other changes are not at all subtle. The addition of fully equipped SERT teams, trained hostage negotiators, participation in force-on-force exercises, and canine units to

track intruders and ferret out explosives, for example, are a great deal more than attempts to keep current with technology. They mark a departure from the days when PSO's were "relatively unskilled employees performing for the most part routine physical tasks."

It is true that many of the PSO's duties have remained unchanged and are very routine. Checking badges, document destruction, escort duties, traffic functions, and some foot and motor patrol duties, for example, are relatively unchanged, routine in nature and make up the bulk of the average workday. But that is no doubt primarily due to the fortunate fact that terrorist attacks, demonstrations and other similar emergency situations are not everyday occurrences at the Laboratory.

In conclusion, it is clear that the circumstances existing at the time of the initial unit determination proceeding do not currently exist. The significant changes which have occurred render the Board's earlier decision inapplicable to PSO's today.

APPROPRIATE UNIT

Having found that the earlier unit determination decision is inapplicable, it is then necessary to determine the appropriate unit placement for PSO's under circumstances as they currently exist.

The petitioner has argued that a unit of PSO's should be severed from the service unit pursuant to the criteria spelled out in Mallinckrodt Chemical Works. Uranium Division (1966)

162 NLRB 387 [64 LRRM 1011]. That decision dealt with requirements for carving out or severing craft units and functionally distinct departmental units with a tradition of separate representation similar to craft groups. The criteria used in Mallinckrodt, however, need not be applied here. Although a comprehensive service unit was found to be appropriate by the Board, no employee organization was ever certified as exclusive representative. While there is no PERB precedent on this issue the unit as an ongoing entity is questionable at this point. Furthermore, since the Board's initial unit determination decision is not found to have continuing applicability, it is more appropriate to look to the statutory unit criteria when determining the appropriateness of the petitioner's request for recognition. Section 3579 spells out the unit criteria in pertinent parts as follows:

(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.

(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.

.

(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.

.

(f) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (d) and (e) of Section 830.2 of the Penal Code.

In determining the community of interest of PSO's. it is necessary to look at the extent PSO's perform functionally related services toward a common goal. Regardless of the specific work assignment. PSO's all have a common goal: the security of the Laboratory and the protection of special nuclear materials. Although all employees at the Laboratory should be security-conscious, it is the PSO's as a security force who ensure that adequate protections and safeguards are in effect at all times. This is a responsibility and goal not shared by other service unit employees.

Toward that common goal. PSO's all receive extensive training not given to any other Laboratory personnel. As a result of that training, PSO's possess skills completely foreign to other Laboratory employees. Other employees are not trained in tactical maneuvers or deadly weapons, self defense, search and seizure and arrest techniques, among many other skills unique to the security force. There may have been times in the history of the Laboratory when PSO's possessed the same skill levels as custodians or gardeners, for instance, but that was before the threat of terrorism led to increased security measures.

The working conditions of PSO's are also different than all other Laboratory personnel. No other employees are subject to physical fitness standards which could result in the loss of their jobs on an annual basis. That unique factor alone goes a long way in establishing a community of interest among PSO's separate from other Laboratory groups. PSO's are the only employees receiving "on call" pay. Overtime is allocated by a system unique to PSO's. The shift schedules of PSO's are also different than other employees, allowing PSO's to report to the squad room for their roll call meeting and still be in place at their work assignment when other employees change shifts. PSO's are the only Laboratory personnel given psychological examinations and a behavioral events selection interview before their initial employment.

The overlapping job duties between PSO's and other Laboratory employees are minimal and generally related to the less sophisticated PSO duties such as document destruction or escort duties. Although other employees, such as fire fighters or health and safety technicians, may respond to the same alarms as PSO's. or may patrol facilities against exposure to hazardous materials, the record does not indicate that their duties, once they are at the site of the hazardous materials or the alarm, overlap with the duties of PSO's.

No other employees in question act as a security force or carry deadly weapons or search fellow employees, enforce

traffic laws, control access to the Laboratory, patrol the facilities inspecting buildings for security problems, or generally police the Laboratory premises.

There has also been relatively little interchange of employees between the protective service division and other groups of employees. Some of the transferring that has taken place was motivated by a failure to pass the DOE fitness standards. If other Laboratory employees seek to become PSO's, they go through a process similar to outside applicants.

There is little common supervision between PSO's and other Laboratory groups. Among other employees placed in the service unit, there is no common supervision until the level of the Laboratory associate director. There are emergency situations such as fires, radiation spills or criticality alarms, etc. when PSO's are under the direction of an incident commander who would be the senior fire department personnel. However, that chain of command would apply to all Laboratory personnel and does not indicate a community of interest with other employees based upon common supervision.

Because there has never been an exclusive representative for PSO's, there is little history of representation with the Laboratory. The petitioner did enter evidence of meetings with the Laboratory over a limited number of grievances and a few issues such as DOE fitness requirements. That, however, is not significant enough to support an argument for a separate unit

of PSO's. By the same token, since there is no significant bargaining history, finding that a unit of PSO's is appropriate will have no disruptive impact on existing bargaining relationships.

Both parties point to bargaining units outside the Laboratory in support of their positions. The employer points to the PSO's at Lawrence Berkeley Laboratory and argues that including PSO's in a service unit was successful at Lawrence Berkeley Laboratory and is therefore appropriate at LLNL. This argument is unpersuasive for two reasons. First, PSO's at Berkeley perform in a different manner than those at LLNL. PSO's at Berkeley work closely with the U.C. Berkeley police department who perform many of the functions of Livermore Laboratory PSO's. The training of Berkeley PSO's is not as extensive as at LLNL. Arrests are made by the University police officers, and the security at LBL facilities is nowhere near the level required at LLNL. Berkeley PSO's are not subject to DOE fitness requirements, nor do they have emergency response teams such as SERT or hostage negotiators. Generally speaking, the situations at LBL and LLNL are not comparable. This is supported by the Board's earlier finding in Unit Determination for Skilled Crafts Employees of the University of California (1982) PERB Decision No. 242-H. as follows:

While LBL is similar to LLNL in that it gets federal funding and must seek DOE approval of personnel policy, these factors alone do not mandate a separate unit for the

Laboratory. LBL is distinguishable from LLNL in that salary ranges at the latter are set by a local job market survey which must be approved by the DOE, whereas LBL ranges are set by the University and do not require federal approval. Moreover, LBL is not involved in nuclear weapons research and its employees are not required to have security clearance.

The second reason the history at LBL is not helpful in determining the unit at LLNL is that, at the time of the hearing, the collective bargaining agreement concerning the LBL PSO's was less than a year old. Such a limited experience should not play a role in the Livermore determination.

Equally inapplicable are the experiences at other DOE facilities cited by petitioner. Guards at all other DOE facilities are provided by private security companies on a subcontracting basis. They are represented by employee organizations in units limited to guards. Those other facilities fall within the jurisdiction of the NLRB and not HEERA. As such, separate units are mandated by section 9(b)(3) of the Labor Management Relations Act (LMRA)¹² and provide little value to the case at hand.

¹²Section 9(b)(3) of the LMRA reads in pertinent parts as follows:

Provided, That the Board shall . . .
(3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of

Evidence regarding the extent to which employees belong to the same employee organization is also of little value. The petitioner cites the fact that it was the only organization on the ballot during the first election, and that no other employee organization has intervened in the case at hand. However, petitioner did lose the first election to "no representation." Furthermore, other employee organizations will have an opportunity to intervene on any new election.¹³ Petitioner also cites the fact that 14 PSO's testified in support of the separate unit. However, that is not a significant number when compared to the unit size of approximately 200. Thus, the history of representation and the extent of membership of the petitioner are not material factors in this unit decision.

The effect the unit will have on the meet-and-confer relationship must also be taken into consideration. There is

persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership employees other than guards. . . .

¹³PERB Regulation 51310 states as follows:

Within 15 workdays following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization, whether or not a party to the unit hearing, may file an intervention to appear on ballot. . . .

no evidence indicating the employer would have a problem providing employee representatives with authority and availability sufficient to deal effectively with an exclusive representative for a unit of PSO's. There was no such problem during earlier discussions between the employer and the petitioner regarding DOE fitness standards. The employer has taken the position that it would be willing to and has, in fact, met with any employee organization wishing to raise issues of concern to PSO's in the past. Among employees covered by the earlier service unit decision, the protective service division is unique in that it was assigned a representative from the personnel department to be of assistance for employment-related issues.

The numerical size and work location of PSO's also suggest that they would be a workable unit. Although smaller than the University's systemwide bargaining units, a unit of almost 200 PSO's is similar to the sizes found appropriate in campus craft units. With the bulk of PSO's assigned to the Livermore site, and only a limited number assigned to Site 300, the work location creates no special problems for a PSO unit. Communications between the employer and the unit or among the unit members themselves would be relatively simple.

In earlier decisions,¹⁴ the Board found that dividing an

¹⁴See for example, Unit Determination for Skilled Crafts Employees of the University of California, supra.

existing classification among two units was not a problem when LLNL was involved. Even if the University were to prevail in its argument that PSO's belong in a service unit. PSO's would be divided into two units, one at LLNL and one at LBL. Thus, that factor is not an important one.

Since there are no other PSO's in a situation similar to that at LLNL, a PSO unit would be unique within the University system. Because the facts in this case are unique, establishment of a PSO unit will not lead to any proliferation of other PSO units. Only one additional unit is being created which should not create a burden for the University. The University has not demonstrated that its creation would impair the efficient operations of the University or the Laboratory, nor will it interfere with the University's ability to serve students and the public.

The petitioner argues that since PSO's are the equivalent of police officers at LLNL, the rationale underlying section 3579(f) should apply. However, in spite of the fact that PSO's act like peace officers, look like peace officers, used to be peace officers, still perform many of the same functions as peace officers, and in many respects are treated like peace officers by the Laboratory, they are not peace officers pursuant to section 830.2 of the Penal Code. Had the Legislature wanted security guards to be included within section 3579(f). it could easily have done so. Yet it chose to

limit the section to peace officers instead of those performing peace officer functions. Thus, the underlying rationale of section 3579(f) is not a factor taken into consideration in creating this PSO unit.

The petitioner also argues extensively that the Board erred in its earlier unit decision when it decided not to apply the PERB precedent stated in Sacramento City Unified School District, supra. The Board held that its policy of favoring separate units for security guards was for the benefit of the employer, and that if the employer did not want a separate unit, the policy would not be applied. This holding remains precedential and binding, unlike the factual findings of the Board which, due to changes in circumstances are no longer applicable. Therefore, the decision to establish a PSO unit is based entirely upon the statutory unit criteria and does not rely for support upon the policy favoring guard units as spelled out in Sacramento City.

On the afternoon of the last day of the hearing, the University announced, as an alternative position, that if PSO's were found not to be appropriately included within the service unit, then they belonged within the Laboratory technical unit. The issue of including PSO's in the technical unit was never raised at the outset of the hearing as an issue to be litigated. Furthermore, other than restating its position in a footnote in its opening brief and in a single paragraph in its

reply brief, the inclusion of PSO's in the technical unit was not briefed. This issue has not been fully litigated. Thus, the University has failed to demonstrate that it is more appropriate for PSO's to be in a technical unit or that it is inappropriate for PSO's to be in a separate unit. A unit of PSO's is appropriate at LLNL.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, a unit of Protective Service Officers at Lawrence Livermore National Laboratory requested by petitioner is found to be appropriate, and an election shall be held by the San Francisco Regional Director pursuant to the Board's rules and regulations.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on October 2, 1985, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board at its headquarters office in Sacramento before the close of business (5:00 p.m.) on October 2, 1985, or sent by telegraph or certified United

States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III. section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305.

Dated: September 12. 1985

JAMES W. TAMM
Administrative Law Judge