STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION), Employer, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, Exclusive Representative, and STATE PSYCHOLOGISTS IN PUBLIC SERVICE, Petitioner.	Case No. S-S-130-S (S-SR-19) PERB Decision No. 988-S April 9, 1993

Appearances: Warren C. Stracener, Labor Relations Counsel, for State of California (Department of Personnel Administration); Beeson, Tayer & Bodine by Joseph R. Colton, Attorney, for American Federation of State, County and Municipal Employees; Loren E. McMaster, Attorney, for State Psychologists in Public Service.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by the State Psychologists in Public Service (SPPS) to the proposed decision (attached hereto) of a Board agent's dismissal of SPPS's severance petition. The SPPS sought to sever 21 classifications from State Bargaining Unit 19 (Professional, Health and Social Services unit).

The Board has reviewed the entire record, including the proposed decision, transcripts, SPPS's appeal, the American Federation of State, County and Municipal Employees' response and

the State of California (Department of Personnel Administration) response thereto. The Board finds the Board agent's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

Based upon the entire record in this case, the Board agent's determination is affirmed and it is ORDERED that the severance petition filed by the State Psychologists in Public Service be DISMISSED.

Chair Blair and Member Caffrey joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION), Employer, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, Exclusive Representative, and STATE PSYCHOLOGISTS IN PUBLIC SERVICE, Petitioner.	Representation Case No. S-S-130-S (S-SR-19) PROPOSED DECISION (July 2, 1992)

Appearances: Christopher W. Waddell, Chief Counsel, Tamara J. Pierson, Deputy Chief Counsel, and Warren C. Stracener, Labor Relations Council, for State of California (Department of Personnel Administration); Beeson, Tayer, & Bodine, by Joseph R. Colton for American Federation of State, County and Municipal Employees; and Loren E. McMaster for State Psychologists in Public Service.

Before Charles F. McClamma, Hearing Officer.

PROCEDURAL HISTORY

On November 30, 1990, State Psychologists in Public Service (SPPS or petitioner) filed a petition seeking to sever a group of employees[1] from the existing state bargaining Unit No. 19 (Health

[1]The number of employees sought to be severed is approximately 455; they are in the following job classifications:

Clinical Psychology Intern
Consulting Psychologist II
Consultant in Behavioral Sciences, DHS
Psychologist-Clinical
Psychologist (Counseling)
Psychologist (Educational)
Psychologist (Experimental)
Psychologist (Health Facility-Clinical)

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

and Social Services/Professional).[2] The petition was found to be timely filed and to have sufficient proof of support by the Sacramento Regional Director of the Public Employment Relations Board (PERB or Board). Both the employer, State of California (Department of Personnel Administration) (State), and the exclusive representative of Unit 19, American Federation of State, County and Municipal Employees, Local 2620 (AFSCME or Local), opposed the petition. A settlement conference held on January 30, 1991, was unsuccessful.

Between June 3, 1991, and September 18, 1991, seven days of hearing were conducted.[3] A transcript was prepared, briefs were filed, and the case was submitted for decision on January 8, 1992.

Psychologist (Health Facility-Counseling)
Psychologist (Health Facility-Educational)
Psychologist (Health Facility-Experimental)
Psychologist (Health Facility-Social)
Psychology Associate
Psychology Internship Director
Senior Psychologist (Health Facility)
Senior Psychologist
Staff Psychologist-Counseling
Staff Psychologist-Clinical
Vocational Psychologist
Psychometrist
Psychoacoustician

[2]Unit 19 is composed of approximately 107 classifications and includes approximately 3,300 employees who typically possess advanced educational qualifications and provide health care or social services to clients. (See Unit Determination for the State of California (1979) PERB Decision No. 110-S.)

[3]The first five days of hearing were held before the undersigned, and the last two days before Administrative Law Judge Fred D'Orazio.

FINDINGS OF FACT

As the job titles of the classifications listed in footnote 1 reflect, the unit which SPPS is seeking to represent consists primarily of psychologists performing a variety of functions in various settings. The proposed unit also includes two classifications, psychometrist and psychoacoustician, whose duties are related to those of psychologists.[4]

Job Qualifications

Psychologists employed by the State, with few exceptions, are required to have a doctoral degree in psychology and at least one year of supervised internship.[5] Most State psychologists, particularly those on the staff of a health facility (including clinical, counseling, educational, experimental, and social psychologists) must also possess a license, or if unlicensed when hired, must secure one within two years of appointment. Licensure requires a doctoral degree in psychology, completion of one year of pre-doctoral and one year of post-doctoral experience, and successful completion of an examination.

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[4]Although the classification Consultant in Behavioral Sciences, DHS, was also included in the list of positions sought by SPPS, the record is devoid of information about the classification other than information indicating there are no incumbents currently in the class.

[5]The exceptions are as follows: Vocational Psychologists are required to have a masters degree; the Department of Rehabilitation employs approximately 13. Clinical Psychology Interns are in the process of receiving their required postdoctoral training; the Department of Mental Health employs approximately 16. Psychology Associates are in the process of completing training and academic requirements for the doctoral degree; the Departments of Developmental Services and Mental Health each employs approximately 3.

Psychometrists administer, but do not interpret, psychological tests. A college degree or its equivalent is required, and graduate study is desirable. Three psychometrists are employed by the Department of Corrections and one each by the Department of Mental Health and the Youth Authority.

Psychoacousticians study the psychological and physiological effects of noise on people. They are required to have a master's degree and four years of experience. None are currently employed in State service.

Although the possession of advanced educational qualifications is typical of the other classifications in Unit 19, there are significant differences among these qualifications. Some classifications require the equivalent of graduation from college, including, for example, clinical dietician, and community resources specialist. Classifications requiring master's degrees include psychiatric social workers, social service consultants, and public health consultants. Those classifications requiring licensure include physical therapists, speech pathologists, audiologists, pharmacists, and optometrists.

Distribution of Classifications

Of the approximately 455 employees which SPPS seeks to represent, by far the greatest number[6] work for three departments: Mental Health, Developmental Services, and

[6]The numbers of employees in occupational groups and specific classes presented on the following pages is drawn from data contained in Joint Exhibit No. 1. Although care was taken to arrive at accurate figures, if minor errors in calculation were made they would not alter the decision in this case.

Corrections. Relatively few work for four other departments: Rehabilitation, Youth Authority, Veterans Affairs, and Social Services. These same seven departments also employ a large majority[7] of all employees in Unit 19.

Department of Mental Health

The Department of Mental Health (DMH) maintains state hospitals which provide care for patients with a variety of mental disorders or illnesses. Some patients have chronic, severe behavioral problems and are hospitalized as a result of involuntary civil commitments and conservatorships; others have been found incompetent to stand trial or have been adjudicated not guilty by reason of insanity.

Approximately 150 psychologists are employed at the four DMH state hospitals. In addition, five psychologists are employed at the Vacaville Psychiatric Facility, and five consulting psychologists are employed at the DMH administrative offices. DMH also employs a number of other Unit 19 classifications at those sites: approximately 254 psychiatric social workers; approximately 223 rehabilitation and industrial therapists; approximately 34 clinical dieticians; and approximately 34 pharmacists.

A majority of DMH psychologists are clinical psychologists who perform psychological assessments and also engage in the

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[7]Joint Exhibit No. 2 lists the number of incumbents in the classifications within Unit 19 by department and facility. It reveals that approximately 95 percent of Unit 19 employees work in those seven departments.

treatment of patients, both individually and in groups. Generally, these psychologists work as part of interdisciplinary (ID) teams consisting of hospital staff members in various classifications, all of whom provide services to patients. The institutions and the needs of their patients vary, hence, the ID teams vary somewhat in their composition from institution to institution, as well as within the institutions themselves. A core ID team most often includes a psychologist, a psychiatric social worker, a rehabilitation therapist, a psychiatrist, and a registered nurse. Depending upon individual patient needs, an ID team often also includes a psychiatric technician, and less often, one or more of the following: dentist, dietician, podiatrist, and pharmacist.

ID teams usually meet briefly at the start of a shift, and then again once or twice a week for up to several hours. The teams discuss a wide range of subjects, including patient diagnoses and treatment plans, disposition plans for patients leaving the institution, and patient behavioral problems. ID teams usually attempt to arrive at a consensus concerning diagnosis and treatment. However, when consensus is not possible, the psychiatrist has ultimate authority to render a diagnosis and authorize a treatment plan.

In addition to the periodic meetings as members of ID teams, psychologists meet alone with psychiatrists, particularly to review newly admitted patients and to develop diagnoses. The results of their meetings are shared with the ID teams.

DMH psychologists and, to a lesser degree, psychiatrists and psychiatric social workers, engage patients in individual and group psychotherapy, which consists of a variety of techniques intended to alleviate mental illness. Social workers spend less time than psychologists engaging in psychotherapy because they must devote time to case management issues (such as conservatorship status), and to dealing with patients' families. Social workers also evaluate patients; these evaluations are similar to those of psychologists but emphasize social history.

DMH consulting psychologists, rather than providing direct services to clients or patients, consult with other agencies, for example, counties or private entities, which provide services to clients. They have little, if any, contact with other Unit 19 classifications.

Department of Developmental Services

The Department of Developmental Services (DDS) provides services to clients with developmental disabilities rather than mental illnesses. A developmental disability generally indicates the individual has a level of intellectual functioning well below the mean and has substantial deficits in adaptive behaviors. DDS operates seven developmental facilities around the state, and employs approximately 145 psychologists, a majority of whom are clinical psychologists. DDS also employs a number of other classifications within Unit 19, the most numerous of which are rehabilitation therapists (approximately 340), psychiatric social

workers (approximately 164), pharmacists (approximately 60), and clinical dieticians (approximately 43).

The ID team approach to patient care predominates at DDS facilities, even to a greater extent than at DMH. A typical team consists of a psychologist, social worker, psychiatrist, nurse, and rehabilitation therapist or teacher. A dietician, pharmacist, or other specialist may meet with a team if the patient's condition requires their expertise.

ID admissions teams meet daily for an initial screening of new patients and, shortly thereafter, following evaluations by each of the disciplines. ID treatment teams meet annually for a planning conference and semi-annually for a review concerning each patient. Team meetings also occur if there are significant changes in the status or condition of patients. Less formal meetings or consultations also occur regularly between the psychologists and others who work directly with patients, including, for example, psychiatrists, psychiatric technicians, recreation therapists, and teachers.

Typically, a staff clinical psychologist at a DDS facility will be involved in the consultation and development of behavioral programming for patients, direct observation or interaction with patients, preparation of reports and evaluations, and serving as the individual plan coordinator of a particular patient's program.

Department of Corrections

The Department of Corrections (DC) employs approximately 95 psychologists at its facilities throughout the state. DC also employs other classifications within Unit 19, the most numerous of which are chaplains (approximately 78) and pharmacists (approximately 32). The primary duties of DC psychologists are to provide evaluations of, and psychotherapy for, inmates. The evaluations are used by the courts, the Board of Prisons, and DC itself. DC also employs psychiatrists, whose duties are essentially interchangeable with the psychologists and with whom the psychologists work closely. However, psychologists, unlike psychiatrists, may not prescribe medication or admit inmates to in-patient medical facilities. DC psychologists have little contact with employees in other Unit 19 classifications.

Issues of Importance to Psychologists

The "scope of practice" of psychologists employed by the State has been, and continues to be, an issue of great interest to the psychologists. "Scope of practice" refers to the duties which their license allows them to perform.[8] A closely related issue is medical staff membership.[9] By extending medical staff

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[8]The scope of the licensure of clinical psychologists, as defined by Business and Professions Code section 2903, includes diagnosis, prevention, treatment and amelioration of psychological problems. However, section 2904 precludes clinical psychologists from prescribing drugs, performing surgery, or administering electro-convulsive therapy.

[9]Four professions are permitted by law to serve on the medical staffs of health facilities: physicians, dentists, podiatrists, and clinical psychologists.

membership, hospitals permit clinical psychologists to function within the full scope of their practice, and to admit, diagnose, treat, and discharge patients.[10]

Among Unit 19 classifications, only clinical psychologists are permitted by law to serve on hospital medical staffs; nevertheless, the State as an employer has not extended medical staff privileges to its psychologists, but rather has allowed individual facilities or institutions the right to decide whether to grant the privilege. That the State institutions generally have not done so[11] is a matter of concern to psychologists.

Other issues of particular concern to psychologists are the relatively few pay grades through which they may advance in State service and their low rate of pay compared to psychologists in private practice. These factors are viewed by psychologists as adversely effecting the recruitment and retention of psychologists.

AFSCME Structure

Stewards act on behalf of AFSCME at the work sites. There are often a number of stewards at larger facilities, including one for each of the major occupational groups in Unit 19. Each major DMH and DDS facility also has a chief steward. Employees not otherwise represented by a chief steward at a work site are represented by an "area" chief steward.

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[10]See, California Association of Psychology Providers v. Rank (1990) 51 Cal.3d 1 [270 Cal.Rptr. 796].

[11]Psychologists are on the medical staff at one DC facility, the California Men's Colony at San Luis Obispo.

Occupational committees have been established for the following major occupational groups in Unit 19: chaplains, licensing program analysts, pharmacists, psychologists, rehabilitation counselors, rehabilitation therapists, and social workers.[12] Occupational committees are intended to bring issues of special interest to an occupational group, including bargaining proposals, to the Local. They also monitor implementation of contract items, consider problems arising for their particular occupations, and advocate changes. Members of occupational committees and their chairpersons are elected by members within the occupational group. Occupational committees usually meet four to six times per year.

The Local's five member Executive Committee is composed of the president, northern and southern vice presidents, secretary, and treasurer. An annual election is held to fill these offices. The Executive Committee meets once a month to receive reports, to plan strategies for problem areas, and to act on funding requests which cannot wait for the next Executive Board meeting. A psychologist served on the Executive Committee as treasurer in 1984-85.

Each member of the Executive Committee, the chairpersons of the seven occupational committees, and each area and hospital chief steward comprise the Executive Board. From 1985 through 1991 at least one, and as many as four, psychologists have served

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[12]An occupational committee may be formed at the request of members in related job classifications, subject to the approval of the Executive Board.

on the Executive Board each year. The Executive Board meets every other month; all meetings are open. A typical agenda includes reports by the secretary, treasurer, chief stewards, and occupational committee chairpersons; the board also engages in problem-solving concerning issues facing the Local. The board votes on requests to fund occupational committee meetings in advance of each meeting, providing money for transportation, accommodations and meals.

An individual who wishes to raise an issue with the Executive Board may do so by contacting an occupational chair or any executive officer and asking that the issue be raised, or by attending a board meeting and asking to be placed on the agenda. Meetings are rotated between Los Angeles and San Francisco.

The bargaining team is composed of representatives of each occupational committee, the Local's president and two vice presidents, and the chief negotiator, who is usually an AFSCME business agent. Sometimes bargaining proposals are initiated by an occupational committee; the actual proposal may be drafted by the committee, or the concept may be presented to the negotiating team and written by the occupational committee chair with assistance from negotiating team members.

The Local is affiliated with AFSCME Council 57, which provides various kinds of services, including staffing, offices, clerical and technical support, research, and legislative activity. Four staff persons from the Council, three of whom

work full-time, are assigned to assist the Local in representing Unit 19.

AFSCME/Psychologists Relationship

The State Psychologists Occupational Committee (SPOC) was among the four occupational committees initially established after the Local began representing Unit 19. During an Executive Board meeting in about 1989 or 1990, SPOC's then chair, Dr. Maurice Lyons, sought approval for SPOC meetings every other month for a year. Dr. Lyons believed that lack of communication among psychologists was a major problem for the psychologists, and one which could be addressed by more frequent SPOC meetings. Because his request sought advance approval for meetings for an entire year, it was inconsistent with the usual practice of approving meetings individually. It was, therefore, rejected.

Dr. Thomas Knoblauch, a clinical psychologist at Napa State Hospital, was the Napa State SPOC representative between March of 1989 and early 1991. He found the Local's business agent to be unresponsive to SPOC's requests for information about AFSCME, for example, membership rosters, bylaws of the AFSCME international, minutes of the Executive Board meetings,[13] and the working budget. He had concerns about how the unit was staffed and wished to have a sense of whether monies would be available to pursue psychologists' goal of gaining staff privileges following the decision in CAPP v. Rank, supra, 51 Cal.3d 1. He perceived

[13]The minutes he sought were eventually provided by the steward at Napa State.

that critical time was lost in re-educating the Local's staff after that decision was decided in June of 1990.[14]

Bargaining History

AFSCME is the only organization to represent Unit 19 since its inception. The State and AFSCME have entered into five collective bargaining agreements. A side letter to the second agreement, 1984-85, provided for establishment of a study group to produce a report on the issue of providing staff privileges to psychologists at State hospitals.

In 1987 Dr. Robert Vreeland, a psychologist at Napa State Hospital, was SPOC chair and served on the negotiating team. Bargaining issues of special interest to psychologists at that time were scope of practice and a pay differential for licensed and unlicensed psychologists. Dr. Vreeland felt that the bargaining team pushed hard for their proposals on these issues, albeit without success. However, side letters to the 1987-88 and 1988-91 agreements provided for discussions regarding scope of practice and medical staff memberships if CAPP v. Rank were decided during the terms of the agreements. A court decision was issued during the term of the latter agreement, and AFSCME's business agent, Elgin Bradley, requested discussions on those issues in a letter to the State dated October 3, 1990. Discussions held during early 1991 produced no change; the State continued to allow individual institutions to decide for

[14]The decision issued June 25, 1990, and was modified on denial of rehearing on September 20, 1990.

themselves whether to grant staff privileges. DDS preferred to allow its facilities discretion to grant staff privileges to psychologists, based upon whether there was a cooperative relationship between physicians and psychologists at each site.

The Local and the State have negotiated contract provisions which have been particularly, if not exclusively, beneficial to psychologists, including reimbursement for license renewal fees, eligibility to be considered for a pay differential (Alternate Range 40) for certain supervisory work, and eligibility for a recruitment and retention pay differential. A provision applicable to all Unit 19 classes, but of particular value to psychologists, especially those studying for their licenses or seeking to establish private practices, permitted the establishment of alternate work schedules.

Formation of State Psychologists in Public Service

An organization called Psychologists in Public Service (PIPS) came into being in the 1970's, and played a role during the organizing activities which led to the existing State units. Following AFSCME certification by PERB as the exclusive representative of Unit 19 in 1981, PIPS became relatively inactive. In about 1990 Dr. Lyons began to revitalize PIPS. He concluded that PIPS' name was too similar to a division of the California Psychological Association; therefore, he changed the name to its present form, State Psychologists in Public Service. Changes by Dr. Lyons to PIPS' by-laws became the by-laws of SPPS. In October of 1990, Dr. Lyons wrote a letter to State

psychologists explaining his reasons for wishing to create an organization and the process by which to file a severance petition with PERB. He enclosed a membership application as well as proof of support forms. The membership application states the purpose of SPPS to be "to represent State Psychologists in their relations with the State of California." In excess of 100 membership applications have been received by SPPS. Dr. Knoblauch is Acting President, Dr. William Safarjan is Acting Secretary/Treasurer, and Dr. Lyons is "Coordinator". SPPS accepts contributions but currently has no dues.

Impact on State of Additional Unit

The establishment of an additional bargaining unit of psychologists would require additional staff resources in DDS' labor relations office because of the time required for negotiations and the training of managers at various DDS facilities. Labor relations coordinators, program directors, training officers, and personnel staff at each facility are currently dealing with employees in seven different units; severance of psychologists would require them to be familiar with the provisions of yet another agreement.

DMH headquarters currently has five staff persons working on labor relations for its 8,000 employees in 19 bargaining units. An additional unit would require additional time for bargaining and for meeting and conferring. The impact on managers at DMH facilities would be similar to that on DDS staff.

The Labor Relations Division of the Department of Personnel Administration has seven negotiators to handle contract bargaining for the existing state units. Those staff persons dealing with the larger and more complex units each have two units assigned. The staff person currently dealing with Unit 19 would likely handle an additional psychologist unit were it to be approved, because additional staffing is not anticipated. Proportionally less time would be available for dealing with such matters as bargaining, meeting and conferring, grievances, and unfair practice charges.

ISSUE

Should the proposed unit of psychologists and related classifications be severed from existing Unit No. 19?[15]

DISCUSSION

Section 3521[16] of the Ralph C. Dills Act (Dills Act or Act)[17] sets forth the following criteria to be considered in determining an appropriate unit:

> (b)(1) The internal and occupational community of interest among the employees,

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[15]A second issue was raised at the hearing when AFSCME declined to stipulate that SPPS is an employee organization within the meaning of Government Code section 3513(a). However, the facts set forth at pages 15 and 16 of this decision reveal that SPPS possesses all the necessary indicia of an employee organization. (See State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S.)

[16]All references are to the Government Code unless otherwise indicated.

[17]The Dills Act, which formerly was known as the State Employer-Employee Relations Act, is found in Government Code section 3512 et seq.

> 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 in state government and in similar employment; 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.
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> (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 state government, 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.
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> (3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of state government and its employees to serve the public.
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> (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.
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> (5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

Unit 19 was among the 20 units initially created by PERB for meeting and conferring between the State and its civil service employees. (Unit Determination for the State of California, supra, PERB Decision No. 110-S.) The Board found

> that employees in [Unit 19] have a strong community of interest, common goals and skills and interrelated functions.
>
> These employees also possess advanced educational qualifications and skills and typically require licensure, certification or credentialing. Most employees perform similar functions focusing on evaluation and assessment of client needs, client counseling and consultation, or client follow-up services of a health, social or employment nature. Some employees plan, organize and coordinate programs while others, such as the pharmacists or the hearing and vision specialists, concentrate on a single area of expertise. Yet these varied occupations work toward the common established goal of assisting the whole person to achieve a satisfying and self-sufficient life.

The Board went on to note that it had not divided classifications "who work in various settings, such as hospitals, offices, and the community." Rather, the Board focused "on the large extent to which employees in all locations render functionally related services, coordinate the delivery of services, have frequent contact and share common skills, working conditions and duties." Finally, the Board concluded that

> [t]o disregard this inherent community of interest would result in a proliferation of units and fragment employees, and would thereby have a detrimental impact on the employer-employee meet and confer relationship.

Since the initial establishment of the 20 state units, the Board has considered relatively few requests to alter those units. In State of California (Department of Personnel Administration) (1989) PERB Decision No. 773-S, a petition to sever a group of employees from bargaining Unit No. 7 (Protective

Services and Public Safety) was dismissed. The Board agreed with the conclusions of the administrative law judge, who had found

> that employees within the proposed unit share a community of interest with employees excluded from the proposed unit, that other law enforcement personnel are excluded from the proposed unit, that a stable bargaining relationship exists and that, therefore, there is insufficient justification to establish the proposed unit.

Not until 1990 was the initial bargaining unit structure for the State altered. In State of California (Department of Personnel Administration) (1990) PERB Decision 794-S, the Board found that Unit 3 (Library and Education) should be divided into two units: Unit 3 (Institutional Education) and Unit 21 (Educational Consultant, Library and Maritime). The majority found the petitioner had overcome the rebuttable presumption in favor of the existing unit, and had established that the new units were more appropriate. This rule is also applicable to the instant case.

Although State of California (Department of Personnel Administration), supra, and this case are factually dissimilar, the Board's analysis is highly instructive.[18] The factors listed

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[18]SPPS's brief makes only a passing reference to State of California (Department of Personnel Administration), supra. Instead, SPPS argues that a case decided under the Higher Education Employer-Employee Relations Act, Regents of the University of California (1982) PERB Decision No. 245-H, is analogous to the instant case and that "PERB determined that the original unit determination should be revisited." (Petitioner's Written Argument, p. 5) However, SPPS mistakenly cites the original unit determination; the case to which SPPS refers and from which it subsequently quotes is Regents of the University of California (1986) PERB Decision No. 586-H. More importantly, that case is significantly different from the instant case in

in Government Code section 3521 were not applied rigidly, but rather were considered, weighed, and balanced. Two factors contributed significantly to the Board's decision to split Unit 3 into two units: community of interest and bargaining history.[19] In establishing the unit in 1979, the Board had concluded that librarians shared a community of interest with institutional teachers. However, the more extensive record available to the Board in 1990 revealed that such was not the case. The Board concluded that "the tasks performed by the consultants and institutional employees do not require common skills, working conditions or job duties," and further, that "[t]he job duties performed by the two groups of employees are vastly different and dictate that these groups be placed in different bargaining units." Further, after examining the bargaining history of the unit, the Board found that although five agreements had been negotiated, there was evidence that "issues of most importance to

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that it involved a request for recognition of a unit of unrepresented employees, not a petition for severance. The unit requested and approved by PERB was, indeed, a part of a larger unit previously found appropriate in Decision No. 245-H. However, no employee organization had received a majority in the election held following that decision, and no exclusive representative was in place. The requested unit was, accordingly, subjected to a different test than is applicable in a severance: the Board noted near the end of its decision that "we find only that a separate unit is <u>an</u> appropriate unit."

[19]In <u>State of California (Department of Personnel Administration)</u>, <u>supra</u>, PERB Decision No. 773-S, the Board noted that stability of the existing bargaining relationship has been recognized as an important factor, citing <u>Livermore Valley Joint Unified School District</u> (1981) PERB Decision No. 165, in which the Board said that "a stable negotiating relationship will not be lightly disturbed."

consultants had been regularly dropped from the negotiations in favor of those issues important to the institutional employees."

In marked contrast to State of California (Department of Personnel Administration), supra, PERB Decision No. 794-S, the Board's findings set forth when it established Unit 19 in 1979 are uncontradicted by the record here. Notwithstanding SPPS's arguments to the contrary, I conclude that the record in this case confirms the community of interest previously found to exist by the Board when it created Unit 19. A significant number of psychologists in state government perform tasks that are functionally related to other classifications within Unit 19. Perhaps the clearest example is the similarity in the work of psychiatric social workers and clinical psychologists at the state hospitals and developmental centers. Both occupations require similar skills and work toward the common goal of improving the mental well-being of patients or clients in common settings. They also work in close proximity and have regular interaction.

In arguing that psychologists lack a community of interest with other classifications within Unit 19, SPPS emphasizes their "different professional levels." However, the Board in Unit Determination for the State of California, supra, PERB Decision No. 110-S, recognized there are differences among the occupational groups in Unit 19, describing them as "varied" and noting that some, "such as pharmacists or the hearing and vision specialists, concentrate on a single area of expertise." The

Board also acknowledged that they work in "various" settings. These occupational differences were weighed against the community of interest found to exist notwithstanding those differences, and balanced against the Board's stated concern over the "proliferation" of units and fragmentation of employees. The record here confirms that psychologists do have certain occupational characteristics which make them unique, or nearly so, in Unit 19, such as possession of a doctoral degree and the legal right to medical staff membership. However, to give undue weight to such differences at this time would disregard the balance among competing factors which was clearly intended by the Board when it created Unit 19. Further, while it is indisputable that a strong community of interest exists among the members of the proposed unit <u>because</u> they are psychologists (or work within the field), the Board has held that

> [a] separate unit is not warranted merely because a group of employees share a community of interest among themselves, when that homogeneous group forms only a part of a larger essentially homogeneous group sharing similar conditions of employment and job functions.

(<u>Sacramento City Unified School District</u> (1977) EERB[20] Decision No. 30.)

Moreover, creation of the unit proposed by SPPS would result in a Unit 19 which would continue to be occupationally diverse, and a new Unit 22, which, while occupationally fairly

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[20]Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

homogenous, would include classifications with marked differences in education, licensing requirements, and job duties. For example, psychometrists are not required to have a graduate degree or to be licensed, and they do not evaluate or devise treatment plans for patients. In contrast, the clinical psychologists in DDS and DMH facilities possess doctoral degrees, are licensed, and devote considerable time to the evaluation and treatment of patients. Another example of the diversity within the proposed unit may be seen by looking at the consulting psychologists who, unlike the clinical psychologists, work not with the mentally ill or disabled, but with other care providers, and work in the community rather than state institutions.

These examples not only serve to illustrate certain "weaknesses" in the proposed unit, they also illustrate the consequence of focusing too narrowly upon selected characteristics of occupations at the expense of other factors; the result is inevitably a fragmentation of employees and a proliferation of units, consequences the Board sought to avoid when it established Unit 19.

While psychologists have interests which distinguish them from other occupations in Unit 19, one example being a desire (as well as the legal right) to be admitted to the medical staffs of state institutions, there is little or no evidence[21] these

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[21]I do not find the instances cited by SPPS, such as the refusal of AFSCME to approve more frequent SPOC meetings, to substantiate their assertion that "the mind set of [AFSCME] leadership excludes consideration of Psychologists and their needs." (Petitioner's Written Argument, p. 33.) Further,

different interests have led to dissension between the psychologists and other unit members or created an unstable bargaining situation. Indeed, five agreements were successfully negotiated. Psychologists participated actively and significantly in the governance of the Local through the SPOC, and psychologists' interests were pursued at negotiations by AFSCME. Although bargaining success was not achieved in areas of special concern to psychologists, there is no evidence to suggest this was due to AFSCME's failure to adequately assert the interests of psychologists. Likewise, there is no evidence upon which to conclude that success would have been achieved had psychologists been in a less diverse unit. In sum, the bargaining history of Unit 19 revealed in this case is similar to that shown to have existed in State of California (Department of Personnel Administration), supra, PERB Decision No. 773-S, in which there were a series of successfully negotiated agreements and no "evidence that the interests of the employees included in the severance petition were trampled upon or ignored." This stable bargaining history provides no justification for the splitting of Unit 19.

Finally, I conclude that if severance were granted, the negotiation and administration of an additional agreement would have a negative impact upon state personnel resources. While not an untenable burden upon state government, it does militate

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Dr. Lyon's failure to win approval for additional SPOC meetings may well have been attributable to his request to have more than one meeting approved in advance.

against granting the severance, especially in the absence of countervailing factors.

The imprecision which is inherent in the process of balancing the competing factors in section 3521 results in various unit configurations which may be found appropriate. For example, much of the evidence relied upon by SPPS to demonstrate the appropriateness of the proposed new unit of psychologists would also support the appropriateness of placing psychologists in Unit 16 along with the psychiatrists with whom they have much in common.[22] However, even if the units resulting from this petition were deemed appropriate, severance would not be warranted. The law requires SPPS to rebut the presumptive appropriateness of Unit 19 and to demonstrate that the proposed units are more appropriate. I conclude that the units which would result from the severance are, at best, only as appropriate as existing Unit 19, and further, that Unit 19 in its present form is appropriate. Accordingly, SPPS has not met its burden of proof. The petition should therefore be dismissed.

PROPOSED ORDER

Based upon the foregoing and the entire record in this case, IT IS ORDERED that the severance petition filed in this case is DISMISSED.

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[22]Even if it were possible to configure units which are more appropriate than Unit 19, PERB lacks authority to reconfigure a petitioned-for unit. (State of California (Department of Personnel Administration), supra, PERB Decision No. 773-S.) Also, any reconfiguration which shifted classifications between existing units would require the agreement of the respective exclusive representatives.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (See Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc., sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

Dated: July 2, 1992

Charles F. McClamma
Hearing Officer