

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



| | | | |
|-------------------------------------|---|-------------------|--------------|
| In the Matter of |) | Case No. | LA-RR-1001 |
| |) | | LA-RR-1001-1 |
| Unit Determination for Employees |) | | LA-RR-1001-2 |
| of the California State University |) | | LA-RR-1001-3 |
| and Colleges Pursuant to |) | | LA-RR-1002 |
| Chapter 744 of the Statutes of 1978 |) | | LA-PC-1002 |
| (Higher Education Employer-Employee |) | | LA-IP-2 |
| Relations Act). |) | | |
| |) | PERB Decision No. | 173-H |
| |) | September 22, | 1981 |

Appearances: Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for the United Professors of California; Grant Lynd and Glenn Rothner, Attorney (Reich, Adell, Crost & Perry) for the Congress of Faculty Associations; Thomas Warschauer for the Association of Business Faculties; John Russum and Gary Robinson for the California Federation of the Union of American Physicians & Dentists; Stuart Libicki, Attorney (Schwartz, Steinsapir, Dohrmann, Krepek, Sommers & Edelstein) and Robert Simpson, Attorney (Rose, Klein and Marias) for the Retail Clerks Union; Grant Lynd, Robert Feinstein and Christine Bologna, Attorneys for the California State Employees Association; and Mayer Chapman, General Counsel, by William G. Knight and Barbara Miller, Attorneys, and Lee Paterson, Attorney (Paterson & Taggart) for the California State University and Colleges.

Before Gluck, Chairperson; Jaeger, Moore and Tovar, Members.

I.

INTRODUCTION

The Higher Education Employer-Employee Relations Act (hereafter HEERA or Act)¹ became effective July 1, 1979 as a result of legislation enacted by the California Legislature in

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

1978. The legislation granted jurisdiction over the HEERA to the Public Employment Relations Board (hereafter PERB or Board). Its terms extend the opportunity for collective negotiations to, among others, the California State University and Colleges (hereafter CSUC) and the CSUC employees' designated representative.² As an initial step in the representational process, PERB has authority to determine the appropriate units for employees of CSUC.³

Pursuant to rules and regulations adopted by the Board,⁴ various employee organizations filed petitions with the Board describing the units they believed to be appropriate. Parties to the instant case then participated in the unit determination hearing conducted by a PERB hearing officer who thereafter transmitted the entire record along with his unit recommendations to the Board itself for decision.

Based on the evidence and the briefs submitted by the parties as well as the hearing officer's recommendations,

²In addition to providing exclusive representation of employees in appropriate units by employee organizations, HEERA also makes it unlawful for the employer or the employee organization to commit certain acts, requires the employer and the exclusive representative to meet and confer in good faith and endeavor to reach an agreement on matters within the scope of representation.

³Subsection 3563(a).

⁴PERB rules and regulations regarding HEERA are codified at California Administrative Code section 50000 et seq.

the Board has determined that the following units are appropriate:

Unit 1 - Physicians

Unit 2 - Health Care Support

Unit 3 - Faculty

Unit 4 - Academic Support

The specific unit composition of these units is discussed infra in Part III of this decision. The issue of exclusion of particular classifications based on supervisory, managerial, confidential or casual status is discussed infra in conjunction with the respective units.

II.

UNIT CRITERIA

The Legislature mandated that the Board consider various criteria in determining an appropriate unit of employees for purposes of meeting and conferring under provisions of the HEERA. Those criteria are set forth in section 3579 of the Act which, in pertinent part, provides:

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with

the employer, the extent to which such employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(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.

(b) There shall be a presumption that professional employees and nonprofessional employees shall not be included in the same representation unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (a) establishes.

(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.

.....

(e) Notwithstanding the foregoing provisions of this section, the only appropriate representation units including members of the academic senate of the University of California shall be either a single statewide unit consisting of all eligible members of the senate, or divisional units consisting of all eligible members of a division of the senate. . . .

In light of the statutory presumption set forth in subsection 3579(b) that professional and nonprofessional employees shall not be included in the same representation unit, the Board also considered the statutory definition of "professional employee" in subsections 3562(o)(1) and (2) which reads as follows:

- (o) "Professional employee" means:
 - (1) Any employee engaged in work:
 - (i) predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or

physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(2) Any employee who: (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (1), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (1).

In structuring units of CSUC employees, we have examined the statutory directive and have sought to place employees with an internal and occupational community of interest in an appropriate unit. We have considered the effect various unit configurations would have on the meet and confer relationships in terms of both the employer's interest in efficient operation of the educational system and in terms of the employees' interests in effective representation. While each statutory criterion was considered in light of the evidence before the Board, we stress, as we did in the unit determination decision

rendered for state employees under the State Employer-Employee Relations Act (hereafter SEERA),⁵

. . . that such unit determination criteria cannot be reviewed in isolation from one another; indeed, there is substantial interplay among the various criteria. Therefore, all of the factors involved in a given situation must be balanced against one another. The result of any such balancing process is that in a particular factual setting some criteria are emphasized over others while in a different setting the weight given the same criteria may be altered.

The specific composition of two of the representation units discussed and described below includes professional and nonprofessional employees. As a result, the Board was required to consider the statutory presumption of subsection 3579(b) set forth above. The presumption established by the statutory language, however, is not conclusive and may be rebutted. Pursuant to the statutory direction, we have considered the criteria of subsection 3579(a), and concluded that the presumption has been rebutted and that the mixed units will more effectively serve to the overall legislative purpose.

The Board has also considered and addressed herein various exclusionary issues based on the alleged managerial or supervisory status of certain classifications.⁶

⁵In Re: Unit Determination for the State of California (11/7/79) PERB Decision No. 110-S.

⁶Managerial employees are excluded from coverage under

Managerial employee is defined in subsection 3562(1), which reads:

"Managerial employee" means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participate in decisions with respect to courses, curriculum, personnel and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of such duties.

Subsection 3580.3 of the Act defines supervisory employees as follows:

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee

the Act in subsection 3562(f). Supervisory employees have limited rights as set forth in section 3580 et seq.

solely because of such duties; provided, that with respect to the University of California and Hastings College of the Law, there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

The above-quoted statutory language essentially parallels the definitions of managerial and supervisory employees as found in SEERA.⁷ We find no reason to depart from the Board's conclusions regarding exclusionary issues as set forth in In Re: Unit Determination for the State of California (12/31/80) PERB Decision No. 110c-S. Thus, we conclude that with respect to the exclusionary issues raised by the parties to the instant case, the burden of proof rests with the party asserting the claim that certain employees should be excluded from coverage. We have also applied the disjunctive interpretation of the statutory language requiring demonstration that an employee meet only one of the specified criteria for exclusion. We similarly have adopted the Board's interpretation of the language "substantially similar" duties

⁷"Managerial employees", as defined in section 3522.1 of SEERA, refers to agency or department policies or programs, does not exclude decisions relevant to courses, curriculum, personnel and other matters of educational policy, and does not include reference to department chairpersons. Similarly, supervisory employees as defined in section 3522.1 of SEERA does not contain the department chairperson language of HEERA.

and the "use of independent judgment" and, to the extent applicable to the higher education sphere, the Board's interpretation of the enumerated exclusionary criteria.

Finally, the regional director has been instructed to examine new classifications and reclassifications made by CSUC subsequent to the close of the record in this case and to place such classes in the appropriate units in accordance with this decision.

III.

UNITS

UNIT 1: PHYSICIANS

The Board finds that a unit consisting of all physicians employed by the California State University and Colleges is appropriate. The unit consists of approximately 200 employees.

The strong internal and occupational community of interest shared by the physicians, as indicated by their common education, training, skills, duties, working conditions, and pursuit of common goals, is separate and distinct from the interests of other employees. Physicians have ethical and legal responsibility for overall patient care and, by law, their essential functions cannot be performed by others. In pursuit of patient care, physicians are the pivotal employees and all other patient care employees are subject to their professional direction. Ohio Valley Hospital Association

(1977) 230 NLRB 604 [95 LRRM 1430]. Because of this inherent "supervisory" authority, a potential conflict of interest with members of the medical support unit exists. Furthermore, potential conflict between physicians and other employees exists because doctors frequently have raised patient care issues during meet and confer discussions with the CSUC rather than the wages, hours, and more traditional concerns of collective negotiating.

Under the National Labor Relations Act (hereafter NLRA)⁸ and the Myers-Miliias-Brown Act,⁹ professional employees can unilaterally decide to be represented in a unit comprised solely of professionals. Physicians traditionally have been placed in professional units composed solely of physicians (Ohio Valley Hospital Association, supra) or in units shared with other medical doctor classifications such as dentists.¹⁰

Likewise, this Board, in the unit determinations under SEERA, has determined that a separate unit of physicians, dentists and podiatrists is appropriate for representation and that these employees should not be included in a broad medical services unit. In Re: Unit Determination for the State of

⁸The NLRA is codified at 29 U.S.C. section 151 et seq.

⁹ This Act is codified at section 3500 et seq.

¹⁰In its determination, the National Labor Relations Board (hereafter NLRB) made findings as to the community of interest criteria similar to this Board.

California, supra. HEERA and SEERA each creates a rebuttable presumption that professional and nonprofessional employees shall not be included in the same unit. For the reasons outlined above, the Board finds that in this case the presumption has not been rebutted.

Physicians should not be included in a unit with academic employees. Doctors have little interaction with these employees in that they do not belong to the academic senates or otherwise share in university governance. Although some doctors occasionally teach, those duties are minimal and incidental to their patient-care functions. Most physicians are in a workweek group that does not receive overtime compensation or shift differentials. Unlike tenured faculty, they are not eligible for sabbatical leave. Since the mid-1970's, the CSUC physicians have had a history of separate representation. Associations comprised exclusively of physicians have met and conferred with university management and have conducted regular organized meetings to discuss health service problems and policies. We therefore find it appropriate to place physicians in a unit separate from academic employees.

Although veterinarians are not responsible for student health care delivery, they, like physicians, are required to undergo four or more years of rigorous scientific and medical

training after undergraduate schooling. Neither group instructs CSUC students as a regular part of their duties. Thus, the veterinarians share a greater community of interest with the medical doctors than with members of any of the other three units established by this decision. For this reason, it is appropriate that they be placed in this unit.

Exclusions - Unit 1

Medical Officers III

Medical officers III are the medical directors of CSUC's student health centers. They are responsible for formulating and administering a comprehensive on-campus student health program. They hire employees and supervise the work of all staff physicians, nurses and technicians in X-ray, physical therapy and pharmacy. All of these job duties and responsibilities indicate a key role in formulating and administering the student health center programs of CSUC. Thus, this classification is excluded as managerial and/or supervisory.¹¹

¹¹The parties did not contest the hearing officer's recommendations concerning the placement of this classification as well as the placement of the resident director, educational television manager, educational television station program director, evaluation technician II, medical officer II, registered nurse IV and supervising registered nurse III. For this reason and consistent with many of the policy reasons set forth in her dissent in Antelope Valley Community College District (6/25/81) PERB Decision No. 168, Member Moore did not address these exclusions.

Medical Officers II

Medical officers II spend half their time supervising physicians, nurses, lab technicians, radiology technicians, pharmacists and physical therapists. They prepare formal evaluations of physicians as necessary and assist medical directors in hiring staff. These job duties indicate significant independent authority to supervise employees within the unit and, thus, medical officers II are excluded as supervisory.

UNIT 2: HEALTH CARE SUPPORT

The Board finds that a unit including professional and certain nonprofessional health center employees, but excluding medical doctors, is appropriate for representation. This unit comprises more than 350 employees in 19 classifications who work in the universities' health centers and provide students with out-patient medical services.

Based on the record, the Board finds that the presumption that professional and nonprofessional employees shall not be placed in the same unit is rebutted by several considerations. The strong community of interest among these health center employees is a particularly persuasive factor. With only few exceptions, all are involved in direct patient care, providing functionally related services in the diagnosis, treatment and maintenance of student health. Job duties range from routine inoculations through laboratory and X-ray procedures to nursing.

While each classification may require different levels of training and academic qualification, the vast majority of these employees are required to have either a license to practice or a certificate in specific fields of medical expertise. All of the employees placed in this unit work under the common supervision of a medical doctor in charge of each campus center. Funding of the health centers is provided through student fees rather than by legislative appropriation, the predominant source of university revenues.

The record provides no evidence that the established unit would have an unfavorable impact on the meet and confer relationship or the efficiency of the employer's operations. While it may not be inherently contrary to the statutory criteria to divide the employees into separate professional and nonprofessional units, their combination in a single unit¹² certainly enhances the availability and authority of employer representatives to deal with the negotiating issues that may be presented and avoids an unnecessary proliferation of units which, in this case, would be exceptionally small in size. The discrete, non-academic function of the health center argues both in favor of the establishment of this unit and against the

¹²Simply omitting the nonprofessional employees from the established unit could result in their ultimate disenfranchisement from the negotiating process, an unwarranted result in view of the strong factors favoring their inclusion with the professional employees.

inclusion of these employees in any of the other units established by this decision.

However, contrary to the Retail Clerks Union's petition to include all health center employees in one unit, we find that health center clerical employees are properly excluded from this unit. These employees are not involved in direct patient care nor are their skills or job qualifications medically oriented. Their job duties are those typically identified with office workers: typing, stenography, bookkeeping, business machine operation, filing, etc. The evidence reveals that health center clerical employees are also functionally interchangeable with clerical employees in other departments of the university and do, unlike medical personnel, transfer to other departments outside the health center. No professional or technical licensure or certification is required of the clerical workers. Further, they are part of a different occupational group¹³ and are in a different workweek group from the included medical support employees.

We do include in this unit the health records technician (1140).¹⁴ According to the job description submitted in evidence, Exhibit 160-E-7, employees in this classification

¹³We conclude, for all the reasons discussed above, that the evidence has not rebutted the presumption that all employees within an occupational group shall be in one unit.

¹⁴We disagree with the hearing officer's recommendation that this classification be placed in a clerical unit.

serve as a

. . . resource for knowing the latest legal and technical aspects of medical records management and uses knowledge and skills acquired through specialized training or experience . . .

Health record technicians are required to possess a thorough knowledge of medical terminology and an ability to read and understand written medical reports. Included in minimum qualifications for appointment is either one year of experience in an acute hospital or doctor's office or completion of eleven semester units in anatomy, medical record science, and health information systems. Thus, although these employees have and use clerical skills, their specialized job requirements and qualifications and their interaction with the professional and technical staff justifies their inclusion in this unit.

Inclusions - Unit 2

Supervising Registered Nurse III:

The employer has claimed that this position is supervisory, but it has not met its burden to prove that supervising registered nurses III (SRN III) actually perform supervisory functions.

Although there was evidence that the SRN III performed the duties of the registered nurse IV in the latter's absence, there was no indication how often these duties were performed. SRN III are also in charge of continuing education, but there was no evidence that the duties connected with this responsibility involved supervisory or managerial functions.

Since the record does not provide sufficient facts which demonstrate that SRN III are either supervisory or managerial, we include them in the Health Care Support Unit.

Exclusions - Unit 2

Registered Nurse IV

Registered nurses IV are the directors of nursing services. Directors spend minimal time on direct patient care, but instead spend over 90 percent of their work time engaged in the overall direction and management of nursing services. Directors establish and maintain nursing standards, policies and procedures for planning, directing, coordinating and evaluating the work of the nursing personnel. They also hire and train all new nursing personnel and prepare work schedules for them. These duties indicate that the registered nurse IV has significant independent responsibility to formulate a nursing program and administer it, which warrants excluding them as managerial.

UNIT 3: FACULTY

After careful consideration of the evidence and the arguments of the parties, and the recommendations of the hearing officer, we have concluded that the purposes and policies embodied in HEERA will be best served by placing all instructional faculty, full-time and part-time, tenured and non-tenured, including coaches and librarians, together in a comprehensive unit.

In reaching this conclusion, we give due weight to the statutory presumption against splitting occupational groups

expressed in subsection 3579(c). In the absence of any legislative indication that the term "occupational groups," is a term of art, or has any special meaning in the CSUC personnel scheme, we have attributed to it its generic meaning. We thus find that instructional faculty constitute an occupational group within the meaning of subsection 3579(c). Because we do not find that a preponderance of evidence indicates that a single unit of instructional faculty is inconsistent with the community of interest criteria set forth at subsection 3579(a), or is otherwise inconsistent with the purposes of HEERA, we conclude that the presumption has not been rebutted and hence that a comprehensive instructional faculty unit is appropriate for meeting and conferring. Moreover, as will be demonstrated by the discussion, infra, we would so conclude on community of interest grounds, even absent the statutory presumption.

The record indicates that instructional faculty in the CSUC system fall into three basic groups. These are tenured and tenure-track, full-time temporary, and part-time temporary faculty.¹⁵ We find that substantial community of interest factors are common to all three groups.

¹⁵There are very few part-time tenured faculty members. The record reflects that they share a community of interest with full-time tenured faculty. Thus, they will not be discussed separately.

Central to our determination is the fact that all groups "perform functionally-related services or work toward established common goals. . . ."16 All faculty groups share instruction of students as their primary function and goal, which provides them with a substantial community of interest in itself.

All faculty are supervised by means of a common scheme carried out by department chairs and departmental committees. The essential supervisory function operates in substantially the same manner vis-a-vis tenured, full-time temporary, and part-time temporary faculty.

All types of faculty have classroom teaching as their primary function.¹⁷ The primary skill which must be possessed by all faculty is that of teaching. Similarly, teaching ability is a primary qualification for employment and retention of all faculty. The record reflects that advanced degrees are preferred as a basic qualification for all faculty.¹⁸

¹⁶Section 3579(a)(1).

¹⁷While tenure-track faculty perform additional duties such as research, scholarly writing, and extensive counseling not performed by temporary faculty, teaching occupies the great majority of their work time.

¹⁸At the time of the hearing, approximately 50 percent of part-time temporary faculty had masters degrees, that 33 percent were enrolled in an advanced degree program, and that approximately 16 percent had doctorates. At that time, approximately 32 percent of full-time temporary faculty and 75 percent of tenured faculty had doctorates.

All faculty groups are entitled to grievance and arbitration procedures, including binding arbitration, after one full term. (The only exception is that part-time temporaries are not entitled to peer review of such matters.)

All faculty groups are salaried. The tenured faculty pay scale constitutes a base, with full-time and part-time temporary faculty receiving a pro rata increment thereof, determined by the extent to which they teach a full-time course load.

History of representation is a statutory factor to be considered. As with pre-Educational Employment Relations Act¹⁹ meet and confer relationships in school districts governed by that statute, we find it appropriate to accord history of representation lesser weight where, as here, it took place prior to application of HEERA. Further, we do not find sufficient evidentiary basis in this record to give prior representational history among faculty substantial weight in arriving at a unit determination.²⁰

The factors noted above indicate a substantial community of interest shared by all faculty members. While we note that there are community of interest factors which differ from group to group, we do not find them sufficient to outweigh the

¹⁹The Educational Employment Relations Act is codified at section 3540 et seq.

²⁰Figures which would indicate the extent to which faculty members belong to the same employee organization were inconclusive.

substantial similarity between all faculty groups. Thus, tenured faculty share similarities with full-time temporary faculty which are not shared by part-time temporary faculty.²¹ By the same token, the tenured faculty share community of interest indicia possessed by neither full-time nor part-time temporary faculty.²²

Upon due consideration of shared community of interest factors which tend to differentiate various faculty groups, we conclude that none of these differences merits splitting faculty along either tenured/non-tenured or full-time/part-time lines. Rather, we find that the community of interest indicia, considered as a whole, mandate placing all instructional faculty together.

The parties placed substantial emphasis on the importance of participation by faculty in university governance. As

²¹For example, both tenured and full-time temporary faculty teach full-time, hold no outside employment, are full members of the state-wide academic senate and are hired by means of an extensive nation-wide job search. In contrast, part-time temporary faculty teach between one and three classes, commonly hold outside employment, participate to a lesser extent in university governance, and are generally chosen by means of a local job search.

²²Thus, tenured faculty can expect to be retained indefinitely, barring misconduct, and are selected for layoff strictly in reverse seniority order after all temporary faculty have been laid off. In contrast, temporary faculty, full-time and part-time are selected for layoff based on merit, without regard to seniority, and are laid off prior to any tenured faculty. They enjoy no expectation of continued employment beyond the term for which they have been hired.

noted above, faculty groups participate to varying degrees in the state-wide and local academic senates, and in departmental committee structures.

All full-time faculty, regardless of tenure status, are eligible to vote for and serve as members of the state-wide Academic Senate which serves as the policy voice of the faculty of CSUC on matters of system-wide concern, formulating and expressing the faculty's policies and making recommendations thereon to the chancellor and trustees of CSUC. Part-time temporary faculty are not eligible.

The Senate operates both informally and formally. For example, Senate representatives have met informally with CSUC administration representatives to transmit the faculty's salary recommendations for presentation to the Governor. The chair of the state-wide Senate played an active role in the legislative process which resulted in the drafting of HEERA. The state-wide Senate is involved in the CSUC internal budget process as well, making recommendations to the Chancellor and Trustees following the submission of budget requests by the individual campuses. Formally, the Senate meets at least twice a year and elects a chair, officers, and an executive committee which acts for the full Senate on matters requiring action between full Senate meetings. The Senate also functions by means of a number of standing committees. The Faculty Affairs Committee, also known as the Retention, Promotion, and Tenure

Committee, makes recommendations regarding selection, retention, and promotion of academic personnel (including but not limited to instructional faculty), grievances and appeals, salary and benefits, and academic freedom issues. The Credit and Curriculum Committee makes recommendations on such matters as credit by examination and curriculum development. The Education Policies Committee recommends criteria for state approval of specific curricula, programs or degrees, admissions requirements, grading standards, and general educational program policies.

The campus academic senates operate much like the state-wide body, except that they deal with campus issues and make recommendations to the campus presidents. Generally, full-time temporary faculty as well as tenured and tenure-track faculty are eligible to vote for and serve as members of campus senates.

The eligibility and participation rights of part-time temporary faculty are less well-defined. Apparently on some campuses they have limited voting rights, have served as representatives, and have been appointed to campus senate committees.

It is clear from the record that the academic senates, both state-wide and campus, are important bodies which formulate and express faculty positions on campus and system-wide issues

relating to educational policy, personnel and budgetary matters. However, the record does not reflect the extent to which the recommendations expressed by the academic senates are effective. Evidence indicates that the Chancellor and Trustees often ignore the state-wide senate's recommendations on various matters. We are unable to conclude, on the basis of this record, to what extent the senates' recommendations are followed by CSUC administration.

Because the membership and participation rights of faculty members in the campus and statewide academic senates do not fully conform to their status as tenured, full-time temporary, or part-time temporary faculty, and because of the lack of evidence regarding the effectiveness of the senates' role in governance, we do not find that the degree to which faculty participate in these governance bodies provides a basis for splitting faculty along such lines.²³

With respect to participation in departmental committees, the record reflects that while tenured faculty participate fully in such committees, the degree of participation by both full-time and part-time temporary faculty varies greatly among

²³We note further that while HEERA provides at subsection 3579(e) that in the University of California system units must be drawn along lines concurrent with lines of academic senate membership, such language with respect to CSUC is conspicuous by its absence. We take this as an indication that the Legislature did not consider membership in the CSUC Academic Senate to be a conclusive unit determination factor.

campuses and departments. Extent of such participation is clearly or uniformly established along lines of faculty status as tenured, full-time temporary, or part-time temporary, so as to provide a basis for splitting instructional faculty along lines of participation in departmental governance.

In his recommendations, the hearing officer found that possession of tenure, or lack thereof, was an overriding community of interest factor. Tenured and tenure-track faculty have a greater expectation of continued employment than do temporary faculty, full-time or part-time, but we do not find this to be a difference which would threaten the meet and confer relationship. While tenure is an important condition of employment, we do not consider it so important as to overcome the community of interest which exists between tenured and non-tenured faculty.

Whereas certain interests and goals of tenured faculty will undeniably differ from those of non-tenured faculty, the overriding shared community of interest among all instructional faculty will, in our judgment, prevent such differences from unduly burdening the meet and confer process. This is particularly true because, by statute, many areas of potential conflict between tenured and non-tenured faculty members have been explicitly removed from the scope of representation.²⁴

²⁴Thus, the statute provides, at subsection 3562(r):

For purposes of the California State University and Colleges only, "scope of

Further, the Legislature considered it so important to preserve the existing procedures for appointment, promotion, retention, and tenure of academic employees that it embodied this goal in its expression of HEERA's purpose.²⁵

The NLRB has consistently declined to separate employees with terminal contracts, such as the non-tenured faculty of CSUC, from those with open-ended employment relationships.

Even if a probationary or temporary faculty member has his expectation of future employment clearly established by terms of a written contract, nevertheless, it is clear that he continues to share a community of interest with other faculty members before

representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:

.

(4) Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees. The exclusive representative shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this paragraph. If the trustees withdraw any matter in this paragraph from the responsibility of the academic senate, the matter shall be within the scope of representation.

²⁵Subsection 3561(b) provides, in pertinent part:

. . . The principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved.

his contract terminates. Fordham University
(1974) 214 NLRB 971 at 975 [87 LRRM 1643].

In accord is Board of Trustees, University of Massachusetts and
Massachusetts Society of Professors/Faculty Staff Union,
MTA/NEA, et al. (10/15/76) 3 MLC 1179, wherein the
Massachusetts Labor Relations Commission rejected the
contention that non-tenured faculty lacked a sufficient
community of interest with tenured faculty by virtue of their
limited expectation of continued employment and placed them
with tenured faculty.

On the basis of the above and the record as a whole, we are
persuaded that it is appropriate to place tenured and
non-tenured faculty together in a faculty unit with librarians
and coaches.

Librarians

In addition to the tenured, full-time temporary and
part-time faculty members, this unit also shall include all
professional librarians. These employees hold an advanced
degree in library science. Although they are funded separately
from CSUC faculty and are not on the same salary schedule as
faculty members, both groups accrue salary increases as a
result of promotion rather than reclassification. Librarians
accrue vacations in the same manner as the faculty. Like
faculty, librarians are ultimately supervised by the academic
vice presidents and enjoy membership in the state-wide and
local academic senates and campus committees. Both groups

utilize the same grievance and disciplinary procedures. Librarians are typically listed among the faculty in campus directories. Librarians are eligible for tenure, are selected after a nation-wide search and are evaluated by their peers based on their job performance as librarians as well as their publication and research achievements.

The primary distinction between librarians and other faculty unit members is the relatively smaller degree of instruction provided by them to the CSUC student body. Although librarians are not primarily instructional personnel, some teach classes on subjects such as library orientation and bibliographic instruction, and they participate in classroom instruction as guest lecturers, team teachers and substitutes. Librarians give student tours of the facilities and prepare written instructional materials. Librarians also have regular interaction with the instructional faculty insofar as they assist faculty members in information retrieval, select books and periodicals for classroom use and aid in the development of special collections.

In the vast majority of cases decided under the NLRA, professional librarians have been placed in units with faculty members. (University of Vermont (1976) 223 NLRB 423 [91 LRRM 1570]; Rensselaer Polytechnic Institute (1975) 218 NLRB 1435 [89 LRRM 1848]; C.W. Post Center of Long Island University (1971) 189 NLRB 904 [77 LRRM 1001]; Fordham

University (1971) 193 NLRB 134 [78 LRRM 1177].) Most often cited is the NLRB's decision in New York University (1973) 205 NLRB 4 [83 LRRM 1549]. There, in spite of differences between librarians and faculty in promotion, workweek, retirement age, tenure requirements, grievance procedures and academic senate representation, the NLRB at page 8, placed the librarians in the faculty unit, holding that librarians:

. . . are a professional group, charged with the responsibility for accumulating appropriate materials and serving the other members of the university community in that respect, and most fringe benefits are available to them. We conclude that they possess a sufficient community of interest to be included in the unit, as a closely allied professional group whose ultimate function, aiding and furthering the educational and scholarly goals of the university, converges with that of the faculty, though pursued through different means and in a different manner.

We concur in this analysis and have therefore placed the CSUC librarians within the Faculty Unit.

Coaches

The Board further holds that the CSUC coaches should appropriately be included in this Faculty Unit. The evidence establishes that coaches hold an advanced degree, engage in classroom instruction, and develop curriculum in addition to their team coaching responsibilities. As indicated by the hearing officer, they share numerous community of interest indicia with full-time temporary faculty members. Coaches

interact with the faculty to a large degree as evidenced by the fact that they are eligible to participate as members in local academic senates and to serve on faculty committees. In essence, the coaching personnel share with the other members of this unit the goal of educating students.

With respect to the following classifications, exclusionary issues were raised by the parties.

Department Chairpersons

Section 3580.3 of HEERA defines the term "supervisory employee". That section, in addition to the general definition of supervisory employee, also sets forth a specific standard to be applied when considering the supervisory status of department chairpersons.

. . . With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties

Thus, in reviewing the more than 10 volumes of transcript devoted to the supervisory status of department chairs, the Board has engaged in two inquiries. First, we have examined the evidence to determine whether department chairs exercise any of the enumerated supervisory functions. Second, and critical to the statutory direction, we have examined the evidence to determine whether, in instances where it appears

that the department chairs do exercise supervisory functions, they do so "primarily in the interest of and on behalf of the members of the academic department."

There are approximately 800 department chairs in the CSUC system. Over 40 individuals offered testimony as to the duties of specific chairpersons. Not surprisingly, the evidence is replete with contradictions and inconsistencies suggesting that both authority and procedures differ among departments and among campuses.

With regard to the enumerated supervisory duties and the statute's directive concerning the chairs' role as faculty or administration representatives, the evidence can be summarized as follows. Department chairs do hire non-unit clerical support staff and, on some campuses, also hire part-time faculty. In general, however, chairpersons who hire part-time faculty do so with input from and after consultation with other faculty members. Hiring of tenure-track instructors is uniformly accomplished by use of a committee process. Similarly, decisions regarding reappointments, promotion and tenure of tenure-track faculty are made on a collegial basis and are reflective of the department's view.

CSUC policy requires that department chairs evaluate faculty members and counsel them on factors that will advance their status. There was no evidence as to whether department chairpersons transfer, suspend, lay off or recall employees.

Chairs have the authority to informally counsel faculty whose conduct may warrant discipline and may also write letters of reprimand and initiate disciplinary investigations pursuant to a system-wide policy. Any faculty member, however, may initiate such investigations, and letters of reprimand written by the chair can be grieved by the employees, thus subjecting the action to review by a higher authority.

In general, while it is clear that the chairs do not consult with their colleagues in making disciplinary decisions, the record is inconsistent and thus inconclusive as to the degree of higher level review of a chair's disciplinary action. The chairs have authority to recommend merit salary increases for part-time faculty, but the record is unclear as to whether the chairs consult with other faculty prior to rendering the recommendation and also as to whether the chair's recommendation is independently reviewed by higher authority. In general, the assignment and scheduling of classes is among the chairpersons' functions. However, while there appears to be a wide variance in consultive practice, the weight of the evidence suggests that department chairs usually involve faculty in such decisions. Most of the evidence with regard to chairpersons' authority to grant leaves of absence indicated either that such decisions are made by a faculty committee or that the ultimate authority lies with the dean or other higher level administrator who acts with the chair's

recommendation. The department chair approves overload payments for additional work performed if it is consistent with the CSUC system policy. This approval may be subject to review by higher authority. While chairpersons recommend termination of non-academic staff employees, the chairs' role in firing faculty is limited to ensuring that the process is consistent with university regulations and policies. There is little evidence with regard to the chairs' role in grievance procedures. However, the exhibits presented at hearing reveal that faculty members file grievances over scheduling decisions with the college president rather than with the chairs.

In addition to the evidence bearing on the specifically enumerated supervisory functions, other factors, such as the selection and retention of the chairs, the chairs' Academic Senate membership and the chairs' budgetary functions, are all relevant to determining on whose behalf the chairpersons function.

Department chairs on CSUC campuses are selected by various processes. Some chairs are selected by the president or the dean from among the names submitted by a search committee comprised of faculty. Other chairs are nominated by a departmental election process, the nomination from which is forwarded to the dean or president for action. In other instances, the president appoints the chair after consultation with the department faculty members. Traditionally, the

department chairs serve for a three or four-year term. They are evaluated by the faculty and the dean. Only the president has authority to remove a chair. However, when department faculty recommend removal, an investigation is undertaken by the dean who makes a recommendation to the president. The evidence discloses that while, on a few occasions, chairs have been removed over faculty objection, most chairs who have been removed have been relieved of their duties because of the faculty's objection to the chair's performance.

Many department chairs serve on the Academic Senate and do so as representatives of the faculty rather than as administration representatives. They also serve as faculty representatives on various university committees.

In general, the department chair is responsible for submitting a departmental budget proposal to the dean or president, but the process by which the budget proposal is determined varies. While the chair has responsibility for allocating departmental funds, the decision is most frequently made with faculty committee involvement or after consultation with individual faculty members. In spite of this variance in procedure, the employer agrees that in budgeting matters the chairpersons are advocates for increasing the welfare of their particular departments.

Although the statutory language set forth in section 3580.3 of HEERA is unique and can reasonably be read to favor

inclusion of chairpersons in faculty units, the analysis used by the NLRB in rendering similar exclusionary determinations regarding department chairpersons is instructive.

In determining the unit placement of chairs in Northeastern University (1975) 218 NLRB 247 [89 LRRM 1862], the NLRB found that while the chairs' role in faculty personnel decisions such as hiring, firing or change of status was a critical consideration, the degree of collegiality involved was determinative as to the exclusionary issue. Where the chairperson's powers have been effectively diffused among the department faculty pursuant to the principle of collegiality, the NLRB generally has included chairs in representation units.

In accordance with this general standard, the NLRB has included department chairpersons where decisions regarding curriculum, budget allocations and hiring recommendations were made by a majority vote of the faculty and subject to higher level review within the university (Northeastern University, supra), or where faculty committees or faculty consultation provided the chairs with recommendations as to hiring, promotion, tenure, budget, course assignment and curriculum decisions (Fordham University, supra). Other factors relied on by the NLRB include ultimate grievance resolution at higher administrative levels (Fordham University, id) and representation of faculty at academic senate meetings (University of Detroit (1971) 193 NLRB 566 [78 LRRM 1273]).

Another factor, relied on by the court in Boston University v. NLRB (1st Cir. 1978) 575 F.2d 30 [98 LRRM 2070], was that department chairs were selected by the deans with consensus of the faculty. Based on this and other factors, the court upheld the NLRB's determination that department chairs represented the interests of faculty rather than the administration.

In cases where the NLRB has excluded chairpersons as supervisory, they have had substantial responsibility over personnel matters. Thus, in Fairleigh Dickinson University (1973) 205 NLRB 673 [84 LRRM 1033], the NLRB excluded chairs based on the fact that only the chair's recommendation on hiring was sent to the dean, even though the faculty might have reached a consensus on the candidates. The critical factor relied on by the NLRB in Adelphi University (1972) 195 NLRB 639 [79 LRRM 1545] to exclude chairs was their authority to hire and reappoint part-time faculty and to allocate merit increases without faculty approval. This decision was made despite the fact that the chairs were elected by the faculty, removed only with faculty concurrence and made most personnel decisions, assignments and budget preparation in consultation with the faculty. See also University of Vermont (1976) 223 NLRB 423 [91 LRRM 1570]; Rensselaer Polytechnic Institute (1975) 218 NLRB 1435 [89 LRRM 1845].

The question of the supervisory status of the CSUC department chairpersons is one of fact for the Board to

decide. (Stop & Shop Cos. v. NLRB (1st Cir. 1977) 548 F.2d 17 [94 LRRM 2416]; NLRB v. Magnesium Casting Co. (1st Cir. 1970) 427 F.2d 114 [74 LRRM 2234], aff'd., 401 U.S. 137 [76 LRRM 2497].) As the court said in NLRB v. Swift & Co. (1st Cir. 1961) 292 F.2d 561 [48 LRRM 2695], when all factual indicia are considered, gradations in authority can be so subtle that determination of supervisory status must, as a practical matter, involve a large measure of informed discretion.

In this case, the evidence before the Board discloses that the job functions of department chairs vary widely within the CSUC system. In general, however, we conclude that the supervisory tasks performed by them are typically performed on behalf of the department faculty rather than the administration. While certain tasks are carried out by individual chairs without faculty input, it appears from the record that in a significant number of circumstances, the chairs do consult with their peers regarding class scheduling, leaves of absence and budget allocations.

Certain other decisions, such as issuance of letters of reprimand, overload payments, and release time for research purposes, are typically reviewed by higher levels of administrators and thus reflect that the chairperson does not act on CSUC's behalf but rather as a spokesperson for the individual department faculty members.

Although there are varying procedures used by the chairs to

hire part-time faculty members, the hiring of tenure-track faculty is uniformly done in conjunction with a faculty committee. Indeed, procedures utilized to reach decisions on appointments, reappointments, promotions, and tenure, although varying from campus to campus, are all made on a collegial basis. We view the department chairs' role in these types of faculty personnel decisions as critical to our determination. (Yeshiva University (1975) 221 NLRB 1053 [91 LRRM 1017].)

Thus, we conclude, based on review of the entire record, that department chairpersons exercise supervisory functions relevant to an employee's status but do so in a collegial format and that their inclusion in the unit with other faculty members will not pose conflicts of interest or divided loyalties.

Casuals

The Board has also considered the status of several classifications which CSUC contends are comprised of casual employees. Casuals are those employees who, due to their sporadic or intermittent relationship with the employer, lack a sufficient community of interest with regular employees to be included in the representational unit (Mission Pak Co. (1960) 127 NLRB 1097 [46 LRRM 1161]).

We adopt the hearing officer's recommendation that these employees are not casuals. We conclude that they share a community of interest with regular employees and are

appropriately included in the Faculty Unit.²⁶

Three of these contested classifications pertain to summer school employment. They are:

Instructional Faculty, Summer Quarter
Assignment (2390)
Instructional Faculty, Summer Session (2357)
Substitute Instructional Faculty, Summer
Session (2356).

These classifications are filled by faculty members who have the same academic training as regular faculty and are, in most cases, the same faculty members that teach during the school year. Essentially these three classifications are used for bookkeeping purposes to dispense extra pay to those regular faculty members who teach during the summer. The CSUC summer curriculum is an integral part of the educational program and even the employees in these classifications who are not regular faculty share a substantial community of interest with other instructional employees.

The classification of instructional faculty, extra quarter assignment, QSYRO (2368) is similar to the above classifications. It is utilized to put regular faculty who

²⁶In response to an issue raised by the employer, we note that voter eligibility is not affected by our determination that the employees discussed herein are not casuals. Although individual employees may have dual classifications within a unit, their membership in the appropriate unit entitles them to only one vote.

teach an extra quarter assignment on the payroll for that overload assignment and is always filled by regular faculty members. We conclude that it is not appropriate to exclude this classification from the Faculty Unit.

The classification of instructional faculty, extension (2363) includes teachers who are employed to teach extension courses. Although this position is sometimes filled by people not otherwise employed by CSUC, it is primarily a classification, similar to those described above, used to facilitate bookkeeping and payroll adjustments. Accordingly, these employees who perform the same type of work and share the same goals as regular teachers, should be included in the Faculty Unit.

Demonstration and instructional faculty (2362) are academic employees who teach in demonstration schools or laboratory schools established by CSUC to instruct student teachers in elementary and secondary teaching methods. These employees teach elementary and secondary classes and instruct CSUC students. Normally, employees filling this classification are public school teachers who are employed for a temporary or partial assignment. Although there was no evidence introduced with regard to their rate of return, we conclude that these are academic employees who provide instruction to CSUC students and share an essential educational goal with other CSUC faculty members. We have therefore included these employees in the

Faculty Unit.

Three other classifications which CSUC seeks to exclude as casual are:

Instructional Faculty, Overseas Contract
(2364)
Lecturer, Overseas Contract (2369)
Vocational Instructor, Overseas Contract
(2466)

All of these classifications are used by CSUC to denominate positions held by teaching personnel on assignment overseas. The instructional faculty position is used mostly by campuses with agricultural programs having contracts with developing countries. Usually, regular faculty members are so assigned. Similarly, the lecturer on overseas assignment is a non-tenure track regular employee temporarily so assigned for a finite period. The vocational instructor normally also has a regular appointment with CSUC. This classification is used when such instructors are sent overseas. All classifications share a strong community of interest with other CSUC faculty. That their assignment is overseas does not negate the fact that they are members of the faculty who are providing instruction to students. As such, they are all included in the Faculty Unit.

The music studio instructional faculty (2365) are employees hired by CSUC to supplement the music department curriculum by offering individual instruction to music students. The persons who typically fill this classification come from outside the regular faculty, teach on a semester-by-semester basis and are

paid by the lesson. Although there is no guarantee of return appointments, some such employees have enjoyed a continuing employment relationship. We find, that because employees in this classification participate in an integral part of the university's instructional program, they are appropriately included in the Faculty Unit.

Two contested classifications, that of instructional faculty, executive committee - academic senate (2390) and instructional faculty, chairman - academic senate (2395). are filled by regular faculty members who also serve in academic senate positions. These classifications are primarily devices to dispense the extra partial payment which the employees earn as a result of this additional placement. We conclude that these classifications, because they are necessarily filled by regular faculty members, are included in the Faculty Unit.

As to several classifications of vocational instructor (2462, 2463, and 2464), CSUC also urges their exclusion as casuals. We find, however, that no evidence was introduced to warrant their exclusion. Since they are presumably a part of the instructional personnel, they are appropriately placed in the established Faculty Unit.

Inclusion - Unit 3

Assistant Director of the Library

The assistant director works under the associate director of the library and is responsible for planning, coordinating

and monitoring the budget. While s/he may be in charge of certain library departments on some campuses, the record does not show what, if any, supervisory or managerial duties s/he performs in that capacity. The assistants' personnel functions are limited to screening candidates to assure they meet the minimum qualifications for the job and monitoring the affirmative action plan. There was no evidence that these tasks involve the assistant in making ultimate hiring decisions.

The assistants participate in planning decisions, but are not primarily responsible for them; rather they implement programs that have been previously determined by the professional staff of the library.

Accordingly, we find that this class is included in the Faculty Unit.

Supervising Librarians

Supervising librarians' job duties appear to vary from campus to campus. Where the evidence reflects that they supervise unit members, it does not clearly establish what supervisory functions they perform. The bulk of the evidence shows that supervising librarians work at reference desks and supervise non-unit employees. The Board thus includes this classification in the Faculty Unit.

Exclusions - Unit 3

Resident Director, International Programs

Resident directors manage autonomous academic centers of

International Programs. They hire faculty, determine the promotion or retention status of faculty, and negotiate on behalf of the CSUC with foreign governments and institutions. Resident directors at nonautonomous academic centers perform all the above duties except for hiring. Their responsibility to manage the entire program indicates that resident directors are properly excluded as managerial employees.

Academic Specialist

Subsection 3562(e) defines a confidential employee as:

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

Subsection 3562(f) excludes confidential employees from coverage under HEERA.

The academic specialist classification includes associate or assistant deans, academic division chiefs of schools, directors, coordinators, and the assistant vice-presidents.

Academic specialists serve as management's representatives in grievance and disciplinary proceedings, functioning as the equivalent of a prosecuting attorney for CSUC. As the employer's representatives, these employees would need to be privy to confidential information related to the employer's grievance position and would be in conflict with the grievant/unit member. To avoid this conflict, we exclude the

classification as confidential.

Associate Director of the Library

The associate director of the library is responsible for meeting with other educational resource directors to determine how much of the educational resource budget the library will receive, disbursing the library budget among its various departments, and developing new bibliographic programs which s/he also administers. These functions indicate significant responsibilities for administering the library and formulating policy and warrant excluding associate directors of the library as management employees.

Director of Athletics

Directors of athletics serve as chief administrative officers of the department, division or program which requires them to prepare and administer the athletic budget of the school, to administer grant and aid programs to student athletes, and to determine the sports program for the campus. Directors of athletics also recruit staff and coaches and make recommendations of appointments to appropriate appointing authorities. All of these job duties and responsibilities indicate a significant role in formulating and administering the athletics programs of CSUC, and supervising staff. This classification is excluded as managerial and/or supervisory.

UNIT 4: ACADEMIC SUPPORT

The Board finds that this unit appropriately includes the

professional classifications of student affairs officers (SAO), student affairs assistants (SAA), educational research project consultant, and the technical classes of credential analyst, educational technician, placement interviewers, student personnel technician, financial aid, student affairs trainee, and supervising library assistants.

Initially, we find that the presumption disfavoring placement of professionals and non-professionals in the same unit is rebutted by the distinct community of interest among these classifications. Employees in this unit occupy a variety of jobs in programs which provide a multitude of services for students including financial aid counseling, housing, career placement, psychological counseling, social and cultural development, testing, administering the Educational Opportunity Program, admissions, programs for disabled students, etc. Thus, academic support personnel perform functionally related services and work toward a common goal of providing non-instructional services which enable students to maximize their educational experience by ministering to their emotional, social, intellectual, and cultural well-being.

Support personnel who work in the same program share a common work location and are supervised by the respective program directors who, in turn, report to the dean of students. Because of the interrelationship among many of the student services, employees in various programs are frequently

required to consult with employees in other programs and often refer students to their colleagues in other programs.

In addition to these community of interest considerations, the fact that separating the technical from the professional class would in this case result in excessive fragmentation and the creation of exceedingly small units further leads us to the conclusion that the subsection 3879(c) presumption is rebutted.

The United Professors of California has urged that all professional employees of CSUC be placed in a single unit, pointing to the fact that some student affairs officers (SAO) and student affairs assistants (SAA) teach classes for credit, serve on academic senates and share other working conditions with faculty. Although SAO teach courses on an intermittent basis, are eligible to serve on the academic senate, occasionally serve on graduate students' thesis committees, and have received research grants from the university, these factors do not persuade us to discount the strong community of interest all academic support personnel have among themselves as demonstrated by the common goals of their occupations. What teaching functions the SAO do perform are strictly voluntary and incidental to the primary purpose of their job.

As originally conceived, the student affairs series was meant to provide a structure of upward mobility for noninstructional professionals, beginning with the student affairs trainee and ending with the SAO V. Although a

doctorate is a preferred qualification for an SAO, movement to that position from the SAA class is not unusual once educational and training requirements are met.

There is much functional interchangeability between SAA and SAO because both classes work in most of the student services programs. For example, most psychological counselors are SAO, yet at Long Beach State, SAA also perform counseling duties under the direction of the SAO. Both classes are evaluated by their peers for purposes of retention and promotion.²⁷

In addition to the community of interest considerations, we are also convinced that splitting the academic affairs series would unnecessarily burden the meet and confer process by requiring two sets of negotiations likely to encompass identical issues due to the commonality of these employees' occupations.

The classifications other than the student affairs group, the educational research project consultant, credential analyst, evaluation technician, placement interviewer, student personnel technician, financial aid, and supervising library

²⁷SAA are not promoted but instead are "reclassified" when their duties become more complex or when vacancies occur. However, despite the label, they are recommended for retention through a committee system of peer review. SAO are promoted on the basis of merit but also receive recommendations by a committee of peers for permanent status after they have served a four-year probationary period.

assistants III are all involved in noninstructional academic support activities.

CSUC hires educational research project consultants from public schools to consult on particular research projects for which there is grant funding.²⁸ The consultants do not teach, although they must have an administrative or a pupil services credential. They assist in the planning and execution of any given educational research project and provide consultant services to teachers and other participants involved in the project.

The remaining classifications possess characteristics common to the other support personnel in that they work in offices and programs with student affairs employees, work toward similar goals, and share many working conditions with other unit members. The work of these classes generally requires a level of expertise gained either by education or on-the-job training which is above that typically required of clerical workers.

The credential analyst reviews, analyzes, and processes applications to the State Department of Education submitted by candidates for public school teaching credentials and advises

²⁸The employer claims that the classification should be excluded from the unit on the grounds that it has only a casual or intermittent relationship with CSUC. We reject this position, finding that the research consultant shows a sufficient community of interest with the academic support personnel to warrant inclusion in this unit.

students on courses necessary to complete the credential requirements. Requirements for the job include a comprehensive knowledge of state credential requirements and those established by the particular campus for which they work.

Duties of the evaluation technician involve the review of transcripts and other papers to assure that admission and graduation requirements have been met.

The placement interviewer works in the placement office and is responsible for preparing students for job interviews and assisting them in the preparation of resumes.

Student personnel technicians work in financial aid offices preparing documents for entry into a computer. This class may also be used as a lower-level financial aid counselor.

Supervising library assistants (SLA) work under the direction of librarians performing a variety of tasks including the supervision of clerical and student employees in the libraries. In the absence of the principal cataloger, the SLA supervises the bibliographic services.

Based on the functions described above, we find these classifications are appropriately included in this unit.

Inclusions - Unit 4: Academic Support Unit

Supervising Student Affairs Officers III

We find that supervising student affairs officers III (SSAO III) are properly included in the Academic Support Unit. Although SSAO III primarily work with students in pre-admission, admission and continued enrollment, there was

some evidence that SSAO III supervise student affairs assistants, counselors and clerical employees. The record does not indicate, however, what tasks the SSAO III performed that were construed to be supervisory or how much time was spent in the allegedly supervisory tasks.

Although CSUC claims that the SSAO III should be excluded, it has not proven facts which warrant the determination they are either supervisory or managerial. The Board, therefore, includes this classification in the Academic Support Unit.

Supervising Student Affairs Officers IV

The record indicated that SSAO IV perform the same duties as SSAO III. CSUC has not presented facts demonstrating any basis upon which we could conclude that SSAO IV are either supervisory or managerial. The Board, accordingly, includes this classification in the Academic Support Unit.

Educational Television Program Director, San Diego State University (2801)

While the program director is responsible for determining the program schedule and directing the day-to-day operation of the station, there is no evidence that s/he formulates and administers policy on behalf of the university or directly exercises any supervisory responsibility over unit employees. The program director works closely with groups participating in the TV schedule to provide guidance and advice in selecting and preparing appropriate programs and is responsible to the

station manager for all administrative matters relating to program production, but there was no showing that the director has authority to make final decisions regarding programming. In sum, we find that the university has not borne its burden of proving that the program director exercises significant managerial or supervisory authority, and therefore include the position in the unit.

Director of Small College and Experimental Education, Dominguez Hills

This director heads a program offered at Dominguez Hills which offers majors in interdisciplinary studies, provides a framework within which professors may initiate new course concepts, and supervises students who do volunteer work in the outside community for academic credit. The director oversees the activities of the program, recruits from existing faculty personnel to teach in the small college, evaluates faculty subject to the same peer evaluation process of other academic departments, develops the syllabus of the small college in consultation with faculty members and organizes programs designed to respond to the needs of the community. For example, the small college works with the Watts Community Action Organization developing summer youth programs aimed at improving high schools students' academic skills.

The authority of the director is analogous to that of department chairs. What supervisory functions s/he exercises are done in consultation with the faculty. Nor does the

evidence show that this director is independently responsible for formulating policy. The position is therefore included in the unit.

Student Affairs Assistants III and IV (2648, 2649)

These classifications are employed almost exclusively in the registrar's and admissions offices and have responsibility for the registration and record maintenance process. While their job requires them to have a thorough familiarity with relevant regulations and policies, the SAA III and IV do not exercise any of the supervisory or managerial functions defined in HEERA. They may make recommendations to the director of admissions about various personnel decisions but s/he has the ultimate authority, and there was no evidence demonstrating the effectiveness of the SAA recommendations.

In sum, the employer has not met its burden to prove that these employees exercise the requisite supervisory functions. They are, therefore, included in the Academic Support Unit.

Supervising Student Affairs Assistants II, III, and IV (2665, 2666, 2663, 2667, 2664)

All three levels of this classification work in several different student services programs and have varying degrees of responsibility. For example, the SSAA II who work in the registrar's office are classed as assistant registrars and supervise non-unit personnel such as clerical workers and student assistants. Although they are involved in discipline, assignment of work and hiring, there was no indication that

they exercised any of these functions over unit employees. Some SSAA II direct small programs, such as the Educational Participation in Communities Program, and supervise a staff of volunteers, clerical assistants and two SAA. SSAA III have some unit members reporting to them, but the record does not indicate the nature of their alleged supervisory duties, if any. Further, the record indicates that the SSAA III spend most of their time performing unit work.

Associate directors of admission and records are SSAA IV, but the record contains no information about any supervisory functions performed by these employees.

In sum, there is insufficient evidence that supervising student affairs assistants as a class exercise any of the supervisory functions with a sufficient degree of independent judgment to warrant their exclusion from the unit. Although some SSAA II, in their capacity of small program directors, may have some supervisory authority over a unit position, we do not believe that the job classification as a whole exercises sufficient supervisory functions to warrant their exclusion from the unit.

Supervising Library Assistant I, II, III

CSUC claims that these classifications are supervisory. The evidence indicates that although these employees serve as heads of various sections within the library, their supervisory functions are exercised only with respect to clerical employees

and student assistants. Because they do not supervise any unit employees, the supervising library assistants are included in the unit.

Exclusions - Unit 4

Educational Television Station Manager, San Diego State University (2801)

The station manager is responsible for the overall development and direction of the public television station established by CSU San Diego. In this capacity, s/he coordinates and supervises the financial affairs of the station; recommends station policies and procedures; evaluates the effectiveness of television operations in light of university policies; supervises the program director and staff in the technical aspects of programming; and develops policies and procedures to insure satisfactory student access to the radio and television stations. Consequently, we conclude that the station manager has significant responsibilities for formulating and administering policies and programs related to the TV station and exclude this position from the unit as a managerial employee.

Student Affairs Program Officers III, IV and V (2669, 2670, 2673, 2675, 2676)

The student affairs program officers (SAPO) direct various student services programs such as the Educational Opportunity Program, counseling centers, and the student union, financial aid and associated student operations. As directors, they have primary responsibility for deciding the direction of the

program, determining relevant policy issues, and initiating new programs and services. For example, the director of the counseling center at Long Beach State established a new program counseling older students reentering the university system. The director of the Educational Opportunity Program reorganized that program, which required him to eliminate some positions and combine other job functions. He is also responsible for deciding the program's student recruitment policies. Similarly, the director of career development, a SAPO V, determines the center's policy regarding services to be provided to students. He, like other SAPO, also hires and supervises the program's staff.

In addition, the SAPO are usually responsible for a significant part of the budgeting process for their programs, often formulating and allocating the budget.

Accordingly, we find that the SAPO III, IV and V exercise sufficient responsibility for formulating policy, administering programs and supervising staff to warrant their exclusion from the unit as managers and/or supervisors.

Supervising Credential Analyst (2629)

This employee heads the credentials section of the registrar's office, directly supervises a staff of three credential evaluators by assigning and reviewing work and otherwise oversees the functions of that department. In addition to having primary responsibility for hiring, training and evaluating staff members, the supervising credential

analyst is involved in the discipline and retention of probationary employees. Based on these indicia of supervisory status, this classification is excluded from the unit.

Evaluation Technicians II (2631)

In his/her role as supervisor of the evaluation services staff, the evaluation technician II hires and evaluates evaluation technicians I, assigns work, establishes guidelines and procedures for the staff to follow, and coordinates their work schedules. Based on this exercise of these supervisory functions, this classification is excluded from the unit.

Director, Southern California Ocean Studies Consortium

This employee is the chief administrative officer of the Oceanic Studies Consortium which exists to support and develop educational and research programs in marine sciences. The director has significant responsibility for initiating and developing policies and priorities of the Consortium and for supervising its staff. S/he is therefore a managerial and/or supervisory employee and is excluded from the unit.

Coordinator, Area and Interdisciplinary Studies

The coordinator is responsible for several programs offered by CSUC, e.g., Child Development, Center for International Studies, the Liberal Studies Program, etc. S/he is responsible for developing policy related to these programs, developing and allocating the budget and exercising general supervision over the faculty teaching in these programs. We find that s/he

possesses sufficient indicia of a managerial employee to warrant his/her exclusion from the unit.

Vocational Instructor, Building Program (2468, 2469)

The incumbent in this position is heavily involved in the planning and implementation of campus building programs. Despite the implication of the title, s/he does not teach but instead negotiates with outside contractors and government officials regarding building matters, and consults with CSUC officials about construction of and alterations in the university's physical plant.

Although the employer contended during the hearing that this position is managerial, it presented no evidence that s/he performs any of the requisite functions of either a manager or a supervisor. However, we decline to place this position in a unit at this time, as it seems to possess no community of interest with any of the four established units.

ORDER

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

(1) The following units are appropriate for the purpose of meeting and conferring in good faith pursuant to Government Code section 3560 et seq.

Unit 1: Physicians Unit

Unit 2: Health Care Support Unit

Unit 3: Faculty Unit

Unit 4: Academic Support Unit

The inclusions in the above-described units, by job classification, and the exclusions therefrom are set forth in Appendix A, attached hereto;

(2) The regional director shall examine new classifications and re-classifications established subsequent to the close of the record in this case and place them in appropriate units in accordance with the Board's decision.

(3) Any technical errors in this ORDER shall be presented to the regional director who shall take appropriate action thereon in accordance with this decision.

The executive director is hereby directed to proceed under California Administrative Code, title 8, part 3, division 4.

PER CURIAM

APPENDIX A

Unit 1 - Physicians

Shall INCLUDE:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|------------------------------|
| 0605 | Veterinarian I |
| 0608 | Veterinarian II |
| 7727 | Medical Officer I - 12-month |
| 7728 | Medical Officer I - 10-month |
| 7729 | Physician I - 12-month |
| 7730 | Physician I - 10-month |

Shall EXCLUDE:

All employees found to be managerial, supervisory or confidential within the meaning of Government Code section 3560 et seq., including:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|--|
| 7723 | Medical Officer III - 10-month |
| 7724 | Medical Officer III |
| 7725 | Medical Officer II - 12-month |
| 7726 | Medical Officer II - 10-month |
| 7733 | Supervising Medical Officer II - 12-month |
| 7734 | Supervising Medical Officer II - 10-month |
| 7735 | Medical Officer II - Program Services - 12-month |
| 7736 | Medical Officer II - Program Services - 10-month |

Unit 2 - Health Care Support

Shall INCLUDE:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|---|
| 1140 | Health Record Technician |
| 7924 | Senior Clinical Laboratory Technologist |
| 7925 | Supervising Senior Clinical Laboratory Technologist |
| 7927 | Clinical Laboratory Technologist |
| 7976 | Speech Pathologist |
| 7980 | Physical Therapist I |
| 7988 | Radiation Protection Specialist |
| 7990 | X-ray Technician |
| 7991 | Pharmacist - 10-month |
| 7992 | Pharmacist - 12-month |
| 8005 | Sanitarian II |
| 8134 | Licensed Vocational Nurse |
| 8135 | Clinical Laboratory Aide |
| 8139 | Registered Nurse |
| 8150 | Registered Nurse I - 10-month |
| 8151 | Registered Nurse I - 12-month |
| 8153 | Registered Nurse II - 10-month |
| 8154 | Registered Nurse II - 12-month |
| 8156 | Registered Nurse III - 10-month |
| 8157 | Registered Nurse III - 12-month |
| 8165 | Nurse Practitioner - 10-month |
| 8166 | Nurse Practitioner - 12-month |
| 8168 | Supervising Registered Nurse III - 10-month |
| 8169 | Supervising Registered Nurse III - 12-month |

Shall EXCLUDE:

All employees found to be managerial, supervisory or confidential within the meaning of Government Code section 3560 et seq., including:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|--------------------------------|
| 8159 | Registered Nurse IV - 10-month |
| 8160 | Registered Nurse IV - 12-month |

Unit 3 - Faculty

Shall INCLUDE:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|---|
| 2356 | Substitute Instructional Faculty - Summer Session |
| 2357 | Instructional Faculty - Summer Session |
| 2358 | Lecturer - Academic Year |
| 2359 | Lecturer - 12-month |
| 2360 | Instructional Faculty - Academic Year |
| 2360 | Department Chair (Program Coordinator, Program Director) |
| 2361 | Instructional Faculty - 12-month |
| 2361 | Department Chair (Program Coordinator, Program Director) |
| 2362 | Demonstration Instructional Faculty |
| 2363 | Instructional Faculty, Extension |
| 2364 | Instructional Faculty, Overseas Contract Assignment |
| 2365 | Music Studio Instructional Faculty |
| 2368 | Instructional Faculty, Extra Quarter Assignment, QYSRO |
| 2369 | Lecturer, Overseas Contract Assignment - 12-month |
| 2373 | Head Coach - 12-month |
| 2374 | Head Coach - 10-month |
| 2375 | Head Coach - Academic Year |
| 2376 | Coach - 12-month |
| 2377 | Coach - 10-month |
| 2378 | Coach - Academic Year |
| 2379 | Coaching Specialist - 12-month |
| 2380 | Coaching Specialist - 10-month |
| 2381 | Coaching Specialist - Academic Year |
| 2382 | Coaching Assistant - 12-month |
| 2383 | Coaching Assistant - 10-month |
| 2384 | Coaching Assistant - Academic Year |
| 2385 | Department Chairman - 12-month |
| 2386 | Administrative Faculty - 12-month |
| 2387 | Grant Related Instructional Faculty - Academic Year |
| 2388 | Grant Related Instructional Faculty - 12-month |
| 2390 | Instructional Faculty - Summer Quarter Assignment |
| 2394 | Instructional Faculty, Executive Committee, Academic Senate |
| 2395 | Instructional Faculty, Chairman, Academic Senate |
| 2399 | Instructional Faculty - Academic Year |
| 2399 | Department Chair (Program Coordinator, Program Director) |

Unit 3 - Faculty (Continued)

Shall INCLUDE (Continued):

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|---|
| 2462 | Vocational Instructor, Academic Year |
| 2463 | Vocational Instructor - 10-month |
| 2464 | Vocational Instructor - 12-month |
| 2466 | Vocational Instructor, Overseas Contract Assignment |
| 2909 | Assistant Director of the Library - 10-month |
| 2913 | Supervising Librarian - 10-month |
| 2914 | Supervising Librarian - 12-month |
| 2919 | Librarian - 10-month |
| 2920 | Librarian - 12-month |

Shall EXCLUDE:

All employees found to be managerial, supervisory or confidential within the meaning of Government Code section 3560 et seq., including:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|--|
| 2320 | Resident Director International Programs - Academic Year |
| 2321 | Resident Director International Programs - 12-month |
| 2370 | Director of Athletics - 12-month |
| 2371 | Director of Athletics - 10-month |
| 2372 | Director of Athletics - Academic Year |
| 2396 | Academic Specialist - Academic Year |
| 2397 | Academic Specialist - 12-month |
| 2468 | Vocational Instructor, Building Program, Academic Year |
| 2469 | Vocational Instructor, Building Program - 12-month |
| 2910 | Associate Director of the Library - 12-month |
| 2925 | Associate Director of the Library - 10-month Coordinator, Area and Interdisciplinary Programs Director, Southern California Ocean Studies Consortium |

Unit 4 - Academic Support

Shall INCLUDE:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|--|
| 2339 | Housing Coordinator - Academic Year |
| 2340 | Housing Coordinator - 12-month |
| 2341 | Counselor - Academic Year |
| 2342 | Counselor - 12-month |
| 2343 | Counselor and Test Officer - Academic Year |
| 2344 | Counselor and Test Officer - 12-month |
| 2345 | Placement Officer - Academic Year |
| 2346 | Placement Officer - 12-month |
| 2349 | Test Officer - Academic Year |
| 2350 | Test Officer - 12-month |
| 2628 | Credential Analyst |
| 2632 | Evaluation Technician I |
| 2635 | Student Personnel Technician, Financial Aid |
| 2636 | Supervising Student Personnel Technician, Financial Aid |
| 2647 | Educational Research Project Consultant |
| 2648 | Student Affairs Assistant III |
| 2649 | Student Affairs Assistant IV |
| 2651 | Student Affairs Trainee |
| 2652 | Student Affairs Assistant I - 12-month |
| 2653 | Student Affairs Assistant I - 10-month |
| 2654 | Student Affairs Assistant II - 12-month |
| 2655 | Student Affairs Assistant II - 10-month |
| 2656 | Student Affairs Officer III - 12-month |
| 2657 | Student Affairs Officer III - Academic Year |
| 2658 | Student Affairs Officer IV - 12-month |
| 2659 | Student Affairs Officer IV - Academic Year |
| 2660 | Student Affairs Officer V - 12-month |
| 2661 | Student Affairs Officer V - Academic Year |
| 2663 | Supervising Student Affairs Assistant III |
| 2664 | Supervising Student Affairs Assistant IV |
| 2665 | Supervising Student Affairs Assistant II - 12-month |
| 2666 | Supervising Student Affairs Assistant II - 10-month |
| 2667 | Supervising Student Affairs Officer III - 12-month |
| 2668 | Supervising Student Affairs Officer III - Academic Year |
| 2671 | Supervising Student Affairs Officer IV - 12-month |
| 2672 | Supervising Student Affairs Officer IV - Academic Year |

Unit 4 - Academic Support (Continued)

Shall INCLUDE (Continued):

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|---|
| 2802 | Educational Television Program Director, SDSU |
| 2894 | Supervising Library Assistant I |
| 2895 | Supervising Library Assistant II |
| 2896 | Supervising Library Assistant III |
| 2984 | Associate Dean, Counseling and Testing |
| 9164 | Placement Interviewer |

Shall EXCLUDE:

All employees found to be managerial, supervisory or confidential within the meaning of Government Code section 3560 et seq., including:

| <u>Class Code</u> | <u>Class Title</u> |
|-------------------|---|
| 2629 | Supervising Credential Analyst |
| 2631 | Evaluation Technician II |
| 2669 | Student Affairs Program Officer III - 12-month |
| 2670 | Student Affairs Program Officer III - Academic Year |
| 2673 | Student Affairs Program Officer IV - 12-month (Records Officer, Admissions and Records) |
| 2674 | Student Affairs Program Officer IV |
| 2675 | Student Affairs Program Officer V (Director of Placement and Disabled Students) |
| 2676 | Student Affairs Program Officer V |
| 2801 | Educational Television Station Manager, SDSU |