

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



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|----------------------------------|---|-------------------------|
| THE CALIFORNIA STATE UNIVERSITY, | ) |                         |
|                                  | ) |                         |
| Employer,                        | ) | Case No. LA-UM-252-H    |
|                                  | ) | (LA-HR-8)               |
| and                              | ) |                         |
|                                  | ) | PERB Decision No. 351-H |
| STATEWIDE UNIVERSITY POLICE      | ) |                         |
| ASSOCIATION,                     | ) | October 20, 1983        |
|                                  | ) |                         |
| Employee Organization.           | ) |                         |

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Appearances; Robert A. Jones (Employee Relations Consulting) for Statewide University Police Association; William B. Haughton, Attorney for The California State University.

Before Tovar, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to a hearing officer's proposed decision.

On July 9, 1981, the Statewide University Police Association (SUPA) filed a unit modification petition requesting that Supervising Public Safety Officers I (sergeants) be added to the established bargaining unit represented by SUPA. It is the position of The California State University (CSU or University) that these employees should not be included in the unit because of their supervisory status.

## FACTUAL SUMMARY

The California State University employs approximately 300 sworn personnel in its Department of Public Safety. There are 19 chiefs, approximately 18 lieutenants, 59 sergeants and 197 officers. There are statewide minimum classification and qualification standards for sergeants. Individual campuses can exceed the minimum standards established by CSU, but they cannot fall below them. Sergeants are required to successfully complete 80 hours of supervisory training as prescribed by the California Commission on Peace Officer Standards and Training within the first year of employment.

Although the parties stipulated to certain representative campuses as examples of small, medium and large campuses,<sup>1</sup> the duties of sergeants vary only slightly based on the size and manner of administration of the particular campus department.

Sergeants are the watch commanders for the different shifts. They are generally responsible for deploying personnel as needed for special events or overtime work. Particular work assignments are frequently scheduled on a volunteer basis. If no volunteers are available, sergeants have authority to assign the tasks as they see fit. On some campuses, patrol areas or beats are assigned to officers by sergeants. On other

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<sup>1</sup>The San Bernardino and Bakersfield campuses were selected to represent the small campuses, Pomona and Fresno, the medium-sized campuses, and San Diego, Long Beach, Los Angeles and San Francisco, the large campuses.

campuses, because of size, there are no regular beats to patrol. Sergeants are responsible for reviewing and correcting all incident reports submitted by officers while in the field. Testimony revealed that the majority of corrections on incident reports involve grammatical or spelling errors. There was no evidence that incident reports have ever been used as a basis for disciplinary action.

Some sergeants perform duties substantially similar to those of officers a large portion of their working time. This is true especially on graveyard shifts when there are fewer employees on duty. The amount of time spent on patrol duties decreases during the day and swing shifts; however, sergeants perform patrol duties in the field, make arrests, check buildings and issue citations just as officers do. Additional duties are often assigned to sergeants, which lessens their time spent on patrol duties. For example, on the Los Angeles campus, a sergeant working the swing shift has been assigned budgetary tasks involving formulating budget items and management objectives for the vice president of the campus.

At each of the campuses, minimum staffing requirements have been established for the work shifts. In general, a sergeant can decide, without prior approval, to call in an off-duty officer if someone fails to report to work or to require overtime in order to maintain the minimum staffing requirements. Sergeants have authority to approve overtime and require documentation of sick leave.

Although sergeants are often the highest ranking public safety officer on duty, during certain shifts a rank-and-file officer will be designated lead officer.

Sergeants regularly attend management meetings where general policy matters, the budget, grievances and other personnel subjects are discussed.

Additional findings of fact relevant to each of the statutorily enumerated criteria of supervisory status are discussed, infra.

#### DISCUSSION

Section 3580.3 of the Higher Education Employer-Employee Relations Act (HEERA or Act),<sup>2</sup> in pertinent part, defines a supervisory employee 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. . . . Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

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

In prior decisions, when called upon to interpret this and other identical statutory language, the Board has rendered various rules of construction designed to guide the parties in their representation proceedings before the Board.

The Board has adopted the disjunctive interpretation of the Act and will find an employee to be a supervisor where the party seeking exclusion demonstrates that an employee meets one of the specified criteria for exclusion and does no rank-and-file work. Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/22/81) PERB Decision No. 173-H. Most circumstances, including the instant case, do not fit this extreme configuration of duties.

It is incumbent on the party seeking to exclude employees from statutory coverage to satisfy its burden of demonstrating that the specific task is regularly performed and not a sporadic or atypical exercise of duties. Additionally, it is necessary to demonstrate that, in conjunction with those duties, the individual exercises independent judgment rather than routine or clerical decision-making. Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (11/17/81) PERB Decision No. 176-H.

Supervisory authority will not be found where the actual authority is limited to a choice between two or more tightly directed and narrowly defined procedures. Independent judgment is indicated where the performance of duties includes the opportunity to make a clear choice between two or more significant alternative courses of action and the power to make that choice is without broad review and approval. Such functions are characterized by significant autonomy and control over the decision-making or recommending processes. Where substantial review or prior approval is required, either by specific action or existing policy, a finding of independent judgment is precluded. Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (3/8/83) PERB Decision No. 246b-H.

Since exclusions are designed to prevent a division of supervisors' loyalties, the alleged supervisory task must, by statutory definition, be exercised in the interest of the employer. In addition, the potential for this conflict of interest lies in the authority to control or influence personnel decisions. Evidence limited to a demonstration of control over work processes does not support an exclusion. Where the guidance of other employees is derived from greater experience, technical expertise and knowledge of the employer's

mission and tasks, such employees may appropriately be included in the unit. Lawrence Livermore National Laboratory, supra.

Finally, the language of section 3580.3 specifically directs that employees whose duties are substantially similar to those of their subordinates shall not be considered supervisory employees. As stated by the Board in Lawrence Livermore National Laboratory, supra;

Section 3580.3, like section 3522.1 of SEERA, clearly authorizes the Board to include in representation units employees who perform some supervisory functions. These employees, despite titles, job descriptions and even duties, may be sufficiently invested with rank-and-file interests to warrant their inclusion in bargaining units. . . .

Rejecting a quantitative analysis, the Board has interpreted the language "substantially similar" to require exclusion when the employees' duties reach that point where the supervisory obligation to the employer outweighs the entitlement to the rights afforded rank-and-file employees. See Unit Determination for the State of California Pursuant to Chapter 1159 of the Statutes of 1977 (State Employer-Employee Relations Act) (12/31/80) PERB Decision No. 110c-S.

After review of all the evidence presented in the instant case, we conclude that the sergeants do not perform any of the enumerated supervisory functions to a degree sufficient to

justify relinquishment of their entitlement to the rights afforded by HEERA.

The evidence fails to demonstrate that the sergeants exercise hiring authority.<sup>3</sup> At certain campuses, sergeants sometimes sit on the panels which interview applicants after the personnel office has screened the applicants to determine their entrance qualifications. However, officers have also been panel participants. The task of the panel is to forward its collectively ranked recommendations to the chief who is empowered to make the final hiring selection. The evidence reveals that the chiefs' final selections are not restricted to the candidate ranked highest by the panel. The chiefs generally select from within the first five candidates. Thus, while the sergeants who are panel participants have some involvement in the hiring process, the sergeants do not demonstrate any degree of autonomy or control over the hiring decision. No finding of independent judgment in the hiring decision can be sustained.

The University also argues that the sergeants assign and direct work of the officers. The record demonstrates, however, that the actual tasks undertaken by the sergeants resemble routine or clerical decision-making rather than clear choices

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<sup>3</sup>The record does not contain evidence referring to sergeants' exercise of authority to transfer, lay off, recall or promote employees.

between two or more significant alternatives. Thus, while the sergeants assign officers within their shifts, the assignment is regulated by an established minimum staffing requirement. Call-up of off-duty personnel or ordering of overtime is undertaken to satisfy the established staffing requirements. As to the assignment of personnel to a particular shift, the testimony is unclear. In general, it is the lieutenants rather than the sergeants who perform this function. The sporadic and atypical performance of shift assignments is thus insufficient in itself to warrant exclusion. Where the sergeant directs officers to perform specific tasks, the nature of the function is more akin to control over work processes by an employee with greater experience and technical expertise rather than the exercise of authority on management's behalf to control or influence personnel decisions. In sum, we view the sergeants' authority to assign and direct work as being exercised within the narrow confines of established patterns of staffing and devoid of any meaningful measure of independently exercised control.

The sergeants' authority to adjust employee grievances is alleged by the University as a basis for requiring the supervisory exclusion. We disagree. We do not dispute the hearing officer's finding that the sergeants frequently resolve the informal disputes or grievances of the officers. However, we do not view this function as satisfying the statutory directive to adjust employee grievances in the interest of the

employer. In other words, the sergeants' adjustments of these day-to-day work disputes are not based on an obligation or allegiance to the employer. Efforts to resolve problems in an informal manner spring from the employees' common goal of insuring a congenial, smooth functioning work environment. The sergeants' involvement in this process poses no conflict with the officers' negotiating relationship with management.

As to the University's established grievance procedure<sup>4</sup> which purports to invest sergeants with first level authority to adjust certain types of grievances, we find no evidence to substantiate the claim that the sergeants have so acted. We decline to conclude that the University has satisfied its

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<sup>4</sup>Executive Order No. 262, issued in 1977, established a grievance procedure for non-academic and administrative employees. According to C. Norman Lloyd, coordinator of public safety, a grievance must be in writing to be cognizable under the University's procedure. Section V defines the scope of the procedure.

Whenever an employee believes he/she has been personally adversely affected by any action taken by her/his appointing authority in the following matters:

- A. Violation of CSUC or campus policies governing working conditions
- B. Promotion
- C. Retention
- D. Layoff
- E. Performance Evaluation
- F. Merit Salary Adjustment
- G. Discrimination Prohibited by Law

Lloyd testified that the sergeants have authority to adjust grievances concerning evaluations and violations of University policy like days off.

evidentiary burden where no evidence establishes that the sergeants regularly act in this capacity. The mere potential to do so, like a job description, is insufficient to remove the sergeants from HEERA's collective bargaining scheme.

In reaching our conclusion that the sergeants are not supervisory employees, we have paid particular attention to the testimony concerning the sergeants' authority to discipline, suspend, discharge and reward officers. While we acknowledge certain instances where a particular sergeant's disciplinary recommendation has been followed, we also find that the record contains evidence to the contrary. For example, Sergeant Steven King, employed on the Long Beach campus, testified that not all of his recommendations regarding written reprimands have been followed. Chief John D. Schorle of San Francisco discussed two recommendations by sergeants to terminate probationary employees, neither of which was followed.

The evidence that sergeants are truly vested with disciplinary authority and control is further called into question by testimony referencing those instances where sergeants' specific recommendations have been altered. Sergeant King testified that his recommendation to suspend an employee was not followed. Rather, a written reprimand was imposed. Chief Schorle similarly described an instance where a sergeant's recommended five-day suspension and orally recommended termination was reduced to a two-day suspension.

Chief Arthur Butler from the San Bernardino campus also testified that on his campus one recommendation for discipline was reduced to a lesser penalty. The case involved the chief's determination that a probationary employee was "salvageable" and would become a productive employee.

In addition to the instances noted above, other witnesses offered testimony describing the typical procedure for imposing discipline. Sergeant E. H. Henry from the Long Beach campus testified that he operates within the disciplinary guidelines and, prior to issuing a written reprimand, would discuss the matter with the lieutenant. Chief Schorle described his role in a particular disciplinary action as concurring with the sergeant's and lieutenant's recommendation which the chief forwarded to the Chancellor's office, the personnel office and the University president.

Sergeant Michael Kolb, employed on the Los Angeles campus, testified that officer evaluations and disciplinary matters were reached by consensus or composite opinion. He referred to one situation where he reviewed the employee's record with the lieutenant.

From the Pomona campus, Chief Thomas Smith testified that sergeants effectively recommended discipline. He also stated, however, that the officers' evaluations were forwarded to the chief prior to discussion with the employee and that evaluations would not be accepted unless signed by both the

sergeant and the lieutenant. In a recent case Smith described, discipline was jointly recommended by the sergeants and lieutenants.

The other witness from the Pomona campus, Sergeant Luis Morales, corroborated Chief Smith's description of the sergeants' role. Morales testified that he reviews an officer's evaluation with the chief and lieutenant prior to discussion with the individual employee. In one instance, the lieutenant and three sergeants agreed to recommend termination. Sergeant Morales also stated that the lieutenant makes an independent evaluation of all probationary employees.

Chief Albert Zuniga, employed in Bakersfield, testified that on a particular occasion, he assigned a sergeant to investigate an incident and conferred with the sergeant regarding the report he prepared.

In addition to these witnesses, testimony was received from C. Norman Lloyd, coordinator of public safety for the University. He stated that, when evaluating officers, the lieutenants generally review the evaluation with the sergeant "before reviewing it with a higher authority."

Q. You indicated that Sergeants are involved in discipline of Officers, is that correct?

A. In recommending discipline of Officers, yes.

We find that the evidence appearing in the record fails to demonstrate that sergeants' disciplinary authority is

sufficiently autonomous to be charged with independent judgment. What emerges from the record is a process where employee evaluations undergo substantial prior review by lieutenants and chiefs. The alleged control over disciplinary matters actually amounts to a recommendation that may be accepted if superiors find it well-reasoned but may just as well be ignored or rejected at the superior's option. Moreover, we are unwilling to characterize the isolated examples of adopted recommendations from sergeants as being representative of the sergeants' typical duties. In balance, the direct testimonial evidence cited above, coming from sergeants and chiefs alike, persuades us to the contrary.

We note, in addition to the foregoing discussion, that the testimony also firmly establishes that the sergeants perform many duties substantially similar to their subordinates. In the main, the record depicts sergeants who work side by side with the officers and whose "supervising" consists of giving direction as would a lead person. Consequently, we do not find from the evidence the University presented that the sergeants' obligation to the employer warrants their exclusion from the unit. As required by the statute, we find that sergeants perform duties substantially similar to their subordinates and decline to find them to be supervisors.

#### ORDER

Having carefully examined all the evidence presented by the

parties, we find that the University has failed to satisfy its burden of proof. We therefore reverse the hearing officer and ORDER that Supervising Public Safety Officers I be added to the established unit.

Member Burt joined in this Decision.

Member Tovar's dissent begins in page 16.

Tovar, Member, dissenting:

I vehemently disagree with my colleagues and find ample evidence on the record to support the finding that Supervisory Public Safety Officer I (sergeants) are indeed supervisors under HEERA.

The term "supervisory employee" is defined in section 3580.31 of the Higher Education Employer-Employee Relations Act (HEERA or Act). With respect to supervisory exclusionary issues, the Board has continued to apply the disjunctive interpretation of section 3580.3. See Unit Determination for Employees of the California State University and Colleges pursuant to Chapter 744 of the Statutes of 1978 Higher Education Employer-Employee Relations Act (9/22/81) PERB Decision No. 173-H and (11/17/81) PERB Decision No. 176-H.

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<sup>1</sup>Section 3580.3 provides:

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. . . . Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

If CSU demonstrates that an employee meets one of the specified criteria for exclusion and does no rank-and-file work, the employee will be excluded from the unit. Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California Pursuant to Chapter 744 of the Statutes of 1978 Higher Education Employer-Employee Relations Act (3/8/83) PERB Decision No. 246b-H.

Realizing that in most cases the duties include both rank-and-file and supervisory elements, the Board developed several guidelines in the Unit Determination 246b-H, supra, case.

Inclusion into the rank-and-file unit will occur where control is demonstrated only over work processes and not when personnel policies and practices are involved.<sup>2</sup> The majority attempts to characterize sergeants as lead employees. However, sergeants have control over more than just the work process in that they have supervisory responsibilities in personnel and administrative matters such as evaluations, commendations, reprimands, assignment of duties and approval of overtime and shift assignments. These supervisory responsibilities of sergeants in administrative and personnel matters dictate their

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<sup>2</sup>These employees are often called "lead" employees: while performing some supervisory personnel functions, the bulk of their duties are substantially similar to those of their subordinates.

exclusion from the rank-and-file unit. See, Unit Determination 246b-H, supra. Further, there is a category of officers referred to as lead officers who are below the sergeants' classification. Therefore, the majority's attempts to analogize Supervisory Public Safety Officer I's to lead officers is an attempt to mask the depth of their supervisory duties.

The majority isn't really adhering to Board precedent but has developed a new standard with no statutory basis. My colleagues conclude that the sergeants do not perform any of the enumerated supervisory functions to a degree sufficient to justify relinquishment of their entitlement to the rights afforded by HEERA. This "degree" test is inappropriate. The guidelines outlined in the Unit Determination 246b-H, supra, case clearly indicate that the controlling factor in these types of cases is the point at which the employees' supervisory obligation to the employer outweighs their entitlement to the rights afforded rank-and-file employees. This point is not determined merely by quantitative analysis. The Board wants to avoid a potential conflict of interest involving the supervisors' loyalties which may occur as a result of the negotiating relationship over issues such as wages, hours and working conditions. Thus, even though the employees may spend part of their time performing the work of subordinates, as they do here, their involvement in one or more supervisory

functions, not the degree of their involvement, may conflict with their participation in rank-and-file unit activity. This supervisory obligation precludes a finding that the disputed employees' duties, overall, are "substantially similar" to those of their subordinates. See Unit Determination 246b-H. This is the critical point my colleagues choose to ignore for the expediency of their finding. The facts in this case support the finding that sergeants are indeed supervisors with control over work processes and administrative and personnel matters.

Sergeants regard themselves as supervisors, and the officers whom they supervise perceive them to be their supervisors as well.

Sergeants are the first-line evaluators of the officers. They fill out performance evaluations on patrol officers assigned to them, both probationary and permanent. Sergeants clearly have to utilize independent judgment in completing the evaluations. The form provides guidelines but the sergeants must independently analyze the actions and demeanor of the officers and translate those perceptions/evaluations into a qualitative analysis. There is nothing mechanical or ministerial about such an intellectual process. In addition, there are open-ended questions where sergeants write their own opinion of the evaluatee. The evaluating sergeant must also indicate whether or not s/he recommends the employee for

permanent status. The Performance Sheet for permanent employees is even more open-ended, requiring more narrative and independent analysis on the part of the evaluating sergeant (See SUPA Exhibit No. 4). The majority claims that employee evaluations undergo substantial prior review by lieutenants and chiefs. The record reveals that their "review" in no way negates the supervisory status of sergeants. The evaluations are independently filled out by the sergeants on behalf of the employer. The lieutenant and/or the chief confer with the sergeant before discussing the evaluation with the officer in question because s/he is the person most knowledgeable and familiar with the evaluation and the evaluatee. The three are, in effect, caucusing over a personnel matter before discussing it with a rank and file member. This is evidence that sergeants are an important part of management's team and have effective input in the evaluation process.

Sergeants inspect the officer's incident reports to insure all substantive aspects of the crime are included. They also check for grammatical errors and the correctness of form. If the report requires that some corrections be made, the sergeant will instruct the officer to make the necessary corrections. There was testimony that if the officer did not obey, the sergeant would make a recommendation for disciplinary action. Although the lieutenants subsequently review the sergeants' evaluations, this review is more informational and perfunctory

than substantive since lieutenants do not have the necessary first-hand information/observation to allow them to make an independent evaluation of the officers as do the sergeants. There was also testimony, which I feel is significant, that the recommendation of sergeants to permanently appoint probationary employees is generally followed by the sergeants' superiors.

Sergeants make recommendations to discipline or discharge officers. Although there weren't many instances where there was a need to discharge, there was testimony that following particularly egregious conduct on the part of one officer (Benson) and one dispatcher (Molina) the recommendation by the sergeants to discharge these employees were effectively followed. Even when the chiefs have not completely followed the termination recommendation by the sergeant because, among other things, the chief thought the recommended discipline too severe, it is clear that the chief has responded to the sergeant's concerns and taken certain disciplinary steps short of the termination. For example, changing the officer in question from one shift to another where he could cause fewer problems, or giving him verbal reprimands.

Sergeants can and do assign officers within their shifts as my colleagues admit. This assignment is not routine or clerical but involves choices on the part of the sergeants between two or more alternative courses of action. For example, sergeants in charge will decide which officer under

their supervision to assign to what task depending on the circumstances and ability of the personnel on duty. If the shift is short of personnel, the sergeant can and does call off-duty officers to come in and/or can require officers to work overtime. The sergeants have complete discretion to decide whom to call. In that respect, sergeants approve reports authorizing overtime without the approval of the lieutenant. Sergeants also have the authority to grant days off.

During special events, while lieutenants have overall responsibility for the entire special event, sergeants have the responsibility for particular areas and will direct those officers who have been assigned to them, including assigning one officer rather than another who, in the sergeant's judgment, is better able to deal with, for example, crowd control.

Sergeants have authority to recommend that officers be commended for exemplary work. The commendation is placed in the officer's personnel file. The evidence indicates that sergeants exercised such authority.

Sergeants typically handle day-to-day "gripes and bitches" or complaints from the officers on behalf of their employer and try to resolve them informally. Merely because they have not had the occasion to adjust a formal grievance does not mean they do not have the authority to do so, but indicates that

sergeants have been effective in settling the grievances at the informal level.

The minimum qualifications and requirements for sergeants indicate that a higher level of education is necessary for them than for officers, as well as the successful completion of Peace Officer Standards and Training (POST) certified supervisory training course. POST Supervisory course curriculum details the supervisory nature of sergeant's required training (See CSU Exhibit No. 2 and No. 3). Course objectives include: a) identification and explanation by sergeant of all items a supervisor must consider when preparing a shift duty schedule; b) preparation of a week's duty schedule for that shift; c) identification and discussion of methods for identifying needs and gathering and interpreting data, etc.; d) management expectations of first-line supervisors; and e) ability to respond to media and the public on behalf of management regarding departmental policies. The course outline of a pilot presentation of a POST supervisory course given January 10, 1977 - January 21, 1977, (see CSU Exhibit No. 3), indicates that sergeants received training in the following areas:

- a) Management skills, comprising of:
  - 1. Theories of management
  - 2. Handling complaints and grievances
  - 3. Problem solving and decision making, and
  - 4. Media relations

- b) Training skills
  - 1. Sergeant as trainer
- c) Supervision skills, including:
  - 1. Personnel performance appraisal
  - 2. Supervisory styles
  - 3. Morale and discipline

This comprehensive supervisory training sergeants receive demonstrates they are more than "lead" employees in that they play an important role on behalf of management over work processes, personnel and administrative matters.

As Chief Schorle testified on the differences between an officer and a sergeant.

One basic difference might be that an officer does and a sergeant supervises. Certainly, the sergeants direct, coordinate, control, train, discipline, and in all facets of police operation on my campus, the sergeants are the linking pin between my directions and policy and the officer's implementation of appropriate procedures. (Tr. p. 300.)

Chief Schorle's statement that sergeants play a key "linking pin" role between management and the rank and file on behalf of management is demonstrated by CSU's Exhibit No. 12. The exhibit is a memo from Sergeant Kolb to the chief reporting on the qualifications and status of a police applicant. Sergeant Kolb went to the Los Angeles Police Department Personnel Division, Background Investigators Office, on behalf of his employer to review the record of the applicant who had

served with the Los Angeles City Police Department. After a detailed analysis Sergeant Kolb concludes "I believe that [the applicant] would need more supervision than this department can provide." Thus, sergeants perform important personnel functions on behalf of the employer which could potentially pose a conflict if they were to be included in the rank and file unit.

Another example of a sergeant performing a supervisory function on behalf of management is a memo from Sergeant Kolb to the chief reporting on concerns which the sergeant had ascertained from the officers and notifying the chief which of these concerns the sergeant was planning to address. (CSU Exhibit No. 14)

#### Conclusion

The Board precedent is clear that the important factor in this type of case is the point at which the employees' supervisory obligation to the employer outweighs their entitlement to the rights afforded rank-and-file employees. Unit Determination 246b-H, supra.

I think that, in the instant case, the performance of important personnel and administrative supervisory functions by sergeants clearly requires their exclusion from the rank and file unit. There is a great potential for conflict as a result of including sergeants in the rank-and-file unit due to the negotiating relationship over issues such as wages, hours and

working conditions and the role that sergeants play in representing management's interests on such issues as evaluations, assignments, discipline and public relations.

Sergeants receive a higher salary than officers due to their supervisory responsibilities. Sergeants must undertake a POST supervisory course curriculum as a condition of POST-certification. Many sergeants have received a waiver to take a middle management training course. Most important, sergeants along with lieutenants attend staff meetings on an ongoing basis called by the chief of each campus. The following may be discussed at these meetings: performance evaluations prepared by the sergeants on patrol officers; formulation of budget where sergeants are given specific assignments to prepare implementation material for the budget; and department policies and other personnel matters.

Even though the sergeants in the instant case spend a majority of their time performing the work of subordinates, their involvement in the various supervisory functions outlined above, including their participation in the management staff meetings and the evaluative nature of their relationship with the officers, will conflict with their participation in the rank-and-file unit activity. Ultimately, the majority has disregarded the activities that indicate supervisory indicia and focused on a few nonsupervisory activities, distorting their importance. Sergeants owe their undivided loyalty to the

employer in making decisions that affect personnel matters of the employees they supervise. CSU has met its burden of proof, I would therefore deem sergeants to be supervisors under HEERA and exclude them from the rank-and-file unit.