

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:)
)
Requests for Reconsideration) Case No. S-R-1 - 56-S
and for Judicial Review)
)
Unit Determination for the)
State of California Pursuant)
to Chapter 1159 of the Statutes) PERB Decision No. 110b-S
of 1977 (State Employer-Employee)
Relations Act).) January 11, 1980
)
_____)

Appearances: Steve Nutter for Agricultural Labor Relations Board Workers Union; Ken Brown for California Correctional Officers Association; Dick Baker for Professional Engineers in California Government; John L. Sullivan for State Trial Attorneys Association; Russ Richeda, Attorney (Carroll, Burdick & McDonough) for California Department of Forestry Employees Association; Russ Richeda, Attorney (Carroll, Burdick & McDonough) for California Department of Forestry Employees Association; Russ Richeda, Attorney (Carroll, Burdick & McDonough) for Association of Special Agents of the California Department of Justice; Jeff Paule, Attorney (Geffner & Satzman) for Administrative Law Judges Council; Hugh Myers for Association of State Agriculture Marketing Specialists; Neil Bodine for State Employees Printing Trades Alliance; Morris Evenson for Painters Union Local #4, I.B.D.A.T., AFL/CIO; Dick Baker for Association of California State Attorneys; Dick Baker for California Medical Technical Assistants Association; Ted Costa for Union of American Physicians and Dentists; John Cohenour, Attorney for Fire Marshalls Local S-9; Christopher Lee, Attorney for California Fish and Game Wardens Protective Association; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg & Roger) for International Union of Operating Engineers, Stationary Engineers Division, State of California; Dick Baker for California State Police Association; Tom Rankin for Local 22 International Federation of Professional & Technical Engineers, AFL/CIO; Tom Rankin for California League of Engineering and Allied Technical Employees (CLEATE), Local 22; Herb Drosdat for California Association of Planners; Robert Milling for California Association of Highway Patrolmen; Sam Bottone for California Nurses Association; Beeson, Tayer &

Kovach, Attorneys for Board of Equalization Tax Auditors Association and California Association of State Auditors; Duane Lovass for Association of Criminalists, California Department of Justice; Valerie Tibbett for California Welfare Hearing Officers Association; Ray R. Tharp for American Federation of State, County & Municipal Employees, AFL/CIO; Dorothy Cannon for Hearing Reporters Council-CASHR; Mario Fracchia for Association of California State Chemists; Coleman Blease for State Employees Trades Council, Local 1268, LIUNA; Neil Bodine for Teamsters Local 960; Pat Hallahan for State Employee Union, Local 411, SEIU, AFL/CIO; Bill Grimm for California Association of Human Services Technologists; James P. Corn for California Highway Patrol Radio Dispatcher; Dean Cofer for IBEW, Local 1245 and Martin Morgenstern for Governor's Office of Employee Relations.

Before Gluck, Chairperson; Gonzales and Moore, Members.

REQUESTS FOR RECONSIDERATION AND FOR JUDICIAL REVIEW

Following the issuance of PERB Decision No. 110-S - Unit Determination for the State of California, on November 7, 1979, the Public Employment Relations Board (hereafter PERB or Board) received numerous requests relating to reconsideration and judicial review of that decision.

These requests were filed pursuant to PERB rules 32410 and 32500 and section 3520 of the State Employer-Employee Relations Act.¹

¹PERB rules are codified at California Administrative Code, Title 8, sections 31000 et seq.

The State Employer-Employee Relations Act (SEERA) is codified at Government Code sections 3512 et seq.

PERB rule 32410 states:

Request for Reconsideration. Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision with the Board itself within seven calendar days following the date of service of the decision. The party shall state with specificity the grounds claimed and where applicable shall specify the page of the record relied upon. A copy of the request must have been actually served upon each party of record prior to filing the request and a statement of such service shall accompany the request. Any party shall have five calendar days from actual service to file a response with the Board itself. "Actual service" as used in this section means actual receipt by the party or their agent. The filing of a request for reconsideration shall not operate to stay the effectiveness of a decision of the Board itself unless otherwise ordered by the Board itself.

PERB rule 32500 states:

Review of Unit Determinations. Any party to a unit determination decision by the Board itself may file a request to seek judicial review within 10 days following the date of service of the decision. The request shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. A copy of the request must have been actually served upon each party of record prior to filing the request and a statement of such service shall accompany the request. Any party shall have five calendar days from actual service to file a response with the Board itself. "Actual service" as used in this section means actual receipt by the party or their agent.

Government Code 3520(a) states in pertinent part:

Judicial review of a unit determination shall only be allowed: (1) when the board,

in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint.

Adherence to the short time period provided for actual service would be inequitable in this case because of logistical difficulties involved in the large number of parties to be served, and the fact that they are dispersed throughout the state, and because of the length of the SEERA decision itself. Because of the desire of the Board to entertain all requests and to expedite the establishment of appropriate negotiating units under the SEERA and the special difficulties of accomplishing actual service in this case, the Board has determined to waive all filing deadlines contained in PERB rules 32410 and 32500 pursuant to the authority provided in PERB rule 32145.² All requests and responses thereto which have been filed and served on the parties prior to the date of this supplemental decision have been accepted.

²PERB rule 32145 states:

Waiver of Time Periods. The Board itself may waive or all parties to a proceeding, subject to the approval of the Board, may jointly waive any time period allowed for action by a party or the Board in order to expedite any pending matter.

In addition to submissions by parties regarding reconsideration and judicial review, PERB has received correspondence from individual state employees, department heads and other persons without standing in this case. All such correspondence was acknowledged but was not a part of the Board's deliberation.

RECONSIDERATION

PERB has considered all requests for reconsideration and has determined that extraordinary circumstances exist which warrant reconsideration of PERB Decision No. 110-S. These circumstances include the complexity of and volume of the evidence presented, the number of parties represented, the number of closing briefs and reply briefs filed, and the sheer magnitude of the task of placing approximately 145,000 state employees in over 4,000 classifications into 20 bargaining units. Recognizing a potential for some technical error, or oversight, the Board believes that the procedures outlined in PERB rule 32410 is the most efficient and expeditious method for the parties to alert the Board to these alleged errors. Many of the parties seeking reconsideration merely re-argued the material contained in their closing briefs without raising any new legal or factual issues. Because the Board had thoroughly considered those arguments before issuing Decision No. 110-S, we are not now persuaded that there should be any substantive changes in the basic composition of the 20 units

determined to be appropriate in our original decision, except for the realignment of all Assistant and Associate Transportation Engineers, CALTRANS into Unit 9, Professional Engineers, for the reasons explained in Appendix B of this decision.

However, several Requests for Reconsideration brought to the attention of the Board certain technical errors and inconsistencies, i.e., those errors which resulted in the initial placement of a classification in a unit which was contrary to the standards for unit placement as set forth in the original decision. These changes appear in Appendix A.

JUDICIAL REVIEW

All requests for judicial review filed pursuant to PERB rule 32500, are denied. PERB declines to join in any of the requests for Judicial Review of a unit determination, as provided in Government Code section 3520.

Every issue raised by the parties in their requests for judicial review was previously considered carefully by the Board in its deliberations prior to the issuance of the original decision. No party has advanced an argument that persuades us that its case is one of special importance. While the SEERA unit determination case is obviously significant for all parties involved and for collective negotiations in state service, we do not find that any of the requests for judicial

review raised any legal issues of special importance. PERB has made numerous determinations of appropriate negotiating units under the Educational Employment Relations Act,³ in which we applied concepts of community of interest, efficiency of operations, representation history and presumptions. While the SEERA unit determination criteria are not identical, many are quite similar. In view of PERB's experience in applying statutory criteria to determine appropriate negotiating units, the legal issues involved here have no special importance owing to their originality or the Board's inexperience.

EXCLUSIONS FROM SEERA COVERAGE

The question of exclusion of persons from coverage of the SEERA is the subject of SEERA Phase III proceedings. PERB will issue a supplemental decision on exclusions at the conclusion of Phase III.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that all requests for reconsideration of PERB Decision No. 110-S are granted and that all requests for PERB to join in seeking

³The Educational Employment Relations Act (EERA) is codified at Government Code sections 3540, et seq.

judicial review of any or all parts of PERB Decision No. 110-S are denied.

Upon reconsideration, the Public Employment Relations Board ORDERS that there be no basic changes in the units determined in PERB Decision No. 110-S to be appropriate for the purpose of meeting and conferring in good faith pursuant to Government Code section 3512 et seq., except that all employees in the classifications of Assistant Transportation Engineer, CALTRANS and Associate Transportation Engineer, CALTRANS are appropriately included in Unit 9, Professional Engineers, and none are included in Unit 11, Engineering and Scientific Technicians Unit. The revised unit descriptions are in Appendix B.

Other changes in unit placement of certain classifications are listed in Appendix A.

The cut off date for voter eligibility shall be December 31, 1979, unless otherwise determined by the Regional Director.

PER CURIAM

Concurring opinion of Board Member Barbara D. Moore begins on page 18.

APPENDIX A
UNIT CHANGES - RECONSIDERATION

Add to Unit No.	Delete From Unit No.	Schematic Code	Class Code	Job Description
10	9	HW 20	3800	Petroleum Geologist
10	9	HU 50	3767	Chief Geologist, State Lands Division
10	1	LE 25	5837	Energy Analyst
11	9	HA 90	3452	Construction Office Manager, Water Resources
12	11	HQ 55	3661	Control System Technician III
12	11	HQ 60	3662	Control System Technician II
12	11	HQ 80	3663	Electrical-Mechanical Testing Technician III
12	11	HQ 85	3664	Electrical-Mechanical Testing Technician II
12	11	HQ 90	3665	System and Testing Technician I
12	11	GA 54	3010	Telecommunications Assistant
13	12	QC 80	6710	Maintenance Worker, Tunnels and Tubes
17	19	TI 65	8160	Health Services Specialist
19	17	TN 34	8147	Medi-Cal Nursing Consultant I
19	17	TN 35	8148	Medi-Cal Nursing Consultant II
20	6	WZ 20	8216	Medical Technical Assistant
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9	11	GJ 80	3167	Associate Transportation Engineer CALTRANS (Technical employees only)
9	11	GJ 90	3170	Assistant Transportation Engineer CALTRANS (Technical employees only)

APPENDIX A continued

APPENDIX A
UNIT CHANGES - RECONSIDERATION
(Continued)

(Because of a clerical error in the original Appendix of Decision No. 110-S, technical employees in the classifications HF 70 and HF 60-Assistant and Associate Transportation Engineer-instead of classifications GJ 80 and GJ 90-Assistant and Associate Transportation Engineer, CALTRANS, had been listed in Unit 11. As noted, however, this supplemental decision removes from Unit 11 the technical employees in the Assistant and Associate Transportation Engineer, CALTRANS, placing them in Unit 9. The description "Professional employees only" should be deleted from the description of these classifications in Unit 9.

All employees in the Assistant Transportation Engineer and Associate Transportation Engineer classifications, HF 70 and HF 60, are in Unit 9, Professional Engineers.)

APPENDIX B

REVISED TEXT OF UNIT 9 AND UNIT 11

UNIT 9. PROFESSIONAL ENGINEER UNIT

The approximately 6,100 employees in this unit of approximately 329 classifications are professional employees within the meaning of section 3521.5. All Assistant and Associate Transportation Engineers, CALTRANS are in this unit. Although some employees in these classifications are not considered "professional" employees within the meaning of section 3521.5, the line between professional and other engineers in these classes is a very fine one. Further, there is a strong similarity in the job duties and required engineering skills. These conditions are sufficiently compelling to overcome the statutory presumption against mixing professional employees and nonprofessionals in the same unit. In arriving at this (revised) unit placement, we are mindful of the mandate of section 3521(b)(2) to take into account, among other factors, "the effect on the existing classification structure . . . of dividing a single class . . . among two or more units." Upon reconsideration, we find that dividing both of these classes would have a negative effect on the structure of the transportation engineer classifications as established by the State Personnel Board.

Regarding engineering technicians, however, it is found that the section 3521(c) presumption has not been rebutted by a preponderance of the evidence, and they consequently must not be mixed with employees in this unit. Additionally, it is found that the engineers in this unit possess a separate and distinct community of interest from other professional state employees.

The evidence presented indicates that, in general, employees in this unit regularly exercise discretion in their work, which is predominately intellectual in character and does not lend itself to standardized measurement by time. In particular, advanced knowledge in engineering, usually acquired through specialized study and/or training, is required for these employees. This unit includes employees who have completed some professional requirements and who are working toward full professional qualifications by performing engineering work under professional supervision.

Included in this unit are a variety of employees who perform at differing levels of responsibility for engineering programming. Registered engineers are of the "practice" and "title" type. Such registration, issued by the Board of Registration for Professional Engineers, involves successful completion of two examinations; first on fundamental engineering principles and subsequently, with an eligibility requirement of several years experience, a specialized exam.

Engineers in training are professionals who have completed the first exam but not the second. Other professional engineers must possess a specialized Bachelor's degree in engineering or related appropriate specialization, sometimes supplemented by additional job training, or the equivalent thereof. In this connection, we note that there are several alternative entry requirements to the classes of Assistant Transportation Engineer, CALTRANS and Associate Transportation Engineer, CALTRANS. These include engineering experience as well as formal educational training.

Obviously, in a unit such as this involving numerous classifications, where a variety of employees exercise a range of significant discretion and have varied responsibility, and where job qualifications differ, defining professional status is not as clear as in other units. Attorney, and physician and dentist positions, for example, clearly require a professional license, for which there are virtually unique education requirements. Therefore, the proper focus in this unit cannot be on the individual qualifications of each engineer but rather on the nature of the work performed as a group.

If most of the engineering positions require a specialized degree and/or registration, it may be presumed that advanced knowledge is required for engineering work generally. Reliance on a rigid criterion of professional status would appear to be unwarranted in this case. Some acknowledged professional

employees can achieve registration without specialized formal education, while others must have specialized education but need not be registered. Furthermore, experience may often be substituted as an equivalent for formal education.¹

Employees in this unit have a separate and distinct community of interest. They perform the same type of work, involving the conceptualization, design, preparation of engineering reports with related calculations, analyze information and perform research related to structures such as highways, bridges, water treatment plants and a variety of other engineering projects. This work requires similar qualifications, training, and skills. Engineers' working conditions differ from most other professional employees; much of their work is in the field at construction sites. In addition, many professional engineers have been represented separately from other state employees for many years.

For all the above reasons, these engineers constitute a separate appropriate unit pursuant to section 3521.

¹See Ryan Aeronautical Co. (1961) 132 NLRB 1160 [48 LRRM 1502], Western Electric Co. (1960) 126 NLRB 1346 [45 LRRB 1415].

UNIT 11. ENGINEERING AND SCIENTIFIC TECHNICIANS UNIT

The Board finds a unit of engineering and scientific technicians, encompassing 203 classifications and approximately 3,100 employees, to be appropriate. The nature of the work performed and the skills and qualifications required demonstrates that these employees share a community of interest distinct from other employees.

The specific job duties of the various classifications differ, but there are certain commonalities. Most utilize scientific instruments and technology, most involve gathering or recording data. These lead to certain common skills requirements: the ability to use technical equipment, to observe, measure, and record data accurately, and to apply technical knowledge to specific problems. Many positions require a familiarity with scientific methods of gaining information.

None of the classifications in this unit requires the advanced specialized knowledge necessary to be considered a professional position, but almost all require a certain amount of education and training in engineering or scientific fields. Training requirements vary; some positions can be entered with minimal training while others require the completion of a certain number of units of college-level engineering, science,

or mathematics classes or of a technical program at a community college.

The basic distinction between professionals and nonprofessionals in engineering and scientific fields is the different levels of education and experience required. This leads to similarly different levels of responsibility and discretion. The work itself may often appear similar, but on closer examination, professional engineers and scientists handle the more complex issues, which require greater independent judgment. In the same manner, attorneys and paralegals do the same type of work but have different levels of responsibility.

Thus, while many of the employees in this unit work closely with professional employees, often performing similar duties, the work is usually at a lower technical level with less responsibility and independence. They may assist engineers or scientists by performing tests and gathering data which are later interpreted or acted upon by the engineers or scientists. For example, air resources technicians conduct tests, the results of which are analyzed by professional air resources engineers and air pollution specialists. Engineering and scientific technicians are often responsible for more routine technical tasks while professional employees do those of greater complexity. As an example, both petroleum technical assistants and energy and mineral resource engineers perform

tests in oil fields, but a distinction is made between the types of tests performed, with those requiring an immediate analysis of complex results being made by an energy and mineral resource engineer.

The Board finds that the technical training, skills, and duties required of employees in this unit unifies them while differentiating them from other nonprofessional employees. In addition, their working conditions further distinguish them. Few work in a traditional office or hospital environment; the vast majority work outside in the field or in laboratories.

Barbara D. Moore, Member, concurring:

With the following exceptions, I join in my colleagues' decision. I adhere to the positions expressed in my dissent in PERB Decision No. 110-S. Our different views were fully articulated there, and I do not believe they need to be reiterated since the issues have been resolved by a majority of the Board.

Some requests for reconsideration proposed moving certain classifications within the engineering, scientific and technicians units. Because I believe that all of those classifications belong in one unit, I did not participate in that portion of this decision which involved considering whether employees in any one of those units should be moved to another of such units.

The decision of my colleagues to move all of the Associate and Assistant Transportation Engineers, including those who perform technical work, from the technicians unit to the Professional Engineers Unit supports the validity of my position that the community of interest common to the entire engineering and scientific community, as well as the satisfaction of the other unit determination criteria contained in Government Code Section 3521(b), rebut the section 3521(c) presumption against including nonprofessional and professional employees in one representational unit.

As my colleagues recognize in their newly revised unit description of the unit they still call a Professional Engineer Unit, "the line between professional and other engineers in these classes is a very fine one." I submit that that fine line exists not only with respect to distinctions between professional and nonprofessional Assistant and Associate Transportation Engineers but also with respect to the other "professional" and nonprofessional" employees in these three units.

Barbara D. Moore, Member