STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF: UNIT DETERMINATION FOR TECHNICAL, SKILLED CRAFTS, SERVICE AND PROFESSIONAL EMPLOYEES OF THE UNIVERSITY OF CALIFORNIA (LAWRENCE LIVERMORE NATIONAL LABORATORY CASUAL EMPLOYEES) PURSUANT TO CHAPTER 744 OF THE STATUTES OF 1978 (HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT)	)	Case Nos. SF-RR-1002-H et al. Request for Reconsideration PERB Decision No. 290-H PERB Decision No. 290a-H August 19, 1983

Appearances; Kent Jonas, Attorney (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

Before: Tovar, Jaeger, Morgenstern and Burt, Members.*

DECISION

On March 4, 1983, the Public Employment Relations Board (PERB or Board) issued a decision[1] under the Higher Education Employer-Employee Relations Act (HEERA)[2], determining the casual employees in various bargaining units at the Lawrence Livermore National Laboratory (LLNL). Thereafter, the

*Chairperson Gluck did not participate in this Decision.

[1]In the Matter of: Unit Determination for Technical, Skilled Crafts, Service and Professional Employees of the University of California (Lawrence Livermore National Laboratory Casual Employees) Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (3/4/83) PERB Decision No. 290-H.

[2]The HEERA is codified at Government Code section 3560 et seq.

University of California (UC) filed a request for reconsideration of the portion of that decision concluding that LLNL indeterminate-time employees who are retirees should not be included in the bargaining units. No employee organization filed a response to UC's request for reconsideration.

In PERB Decision No. 290-H, supra, the Board refused to adopt a stipulation among the parties that indeterminate-time retirees should be excluded from the various units because the record reflected that such retirees, in fact, had a community of interest with other unit members. The Board also stated that it was reluctant to include retirees in the units when the parties had expressed their preference for exclusion. Thus, the Board construed the parties' positions expressed in their briefs as tantamount to an amendment of the employee organizations' initial unit petitions to delete indeterminate-time retirees, with the concurrence of UC.

UC in its request for reconsideration claims that the Board did not fairly interpret its position. It asserts its position is that the Board should determine whether or not indeterminate-time retirees are or are not casual. It does not agree to the constructive deletion of these employees from the petitions of the employee organizations.

Since the Board did not correctly characterize UC's position regarding the unit placement of indeterminate-time retirees,

"extraordinary circumstances" within the meaning of PERB Rule 324103 exist and UC's request for reconsideration is granted. The employee organizations have, in fact, not deleted the indeterminate-time employees from their initial unit petitions, so the Board must determine whether or not such employees should be included in or excluded from the unit.

As was stated in PERB Decision No. 290a-H, supra, indeterminate-time retired employees have the same benefits and working conditions as indeterminate-time employees recruited from the scientific community who are members of the various bargaining units. The single difference that all of the retirees receive pension and/or social security benefits, so that their work eligibility is limited to 90 days of employment in any one year at the risk of losing retirement benefits, is not sufficient to distinguish the two types of indeterminate-time employees and exclude the retirees from the unit. Based on these facts and federal precedent, the Board must conclude that the indeterminate-time retirees are not casual and include them

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3PERB Rules are codified at California Administrative Code, title 8, section 31001 et seq. PERB Rule 32410 provides:

> 32410. Request for Reconsideration.
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> (a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the

in the various bargaining units. Indianapolis Glove Co. v. NLRB (6th Cir. 1968) 400 F.2d 363 [69 LRRM 2261]; Holiday Inns (1969) 176 NLRB 939 [71 LRRM 1333]; Noesting Pin Ticket Co. (1974) 214 NLRB No. 153 [87 LRRM 1588].

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that the University of California request for reconsideration of the

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date of service of the decision. An original and 5 copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

(b) Any party shall have 20 days from service to file a response to the request for reconsideration. An original and 5 copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(c) 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.

unit placement of indeterminate-time retirees is GRANTED, and that such employees are not casual and are included in the various Lawrence Livermore National Laboratory bargaining units.

By the BOARD