

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATE OF CALIFORNIA (DEPARTMENT)
OF PERSONNEL ADMINISTRATION),)
)
Employer,) Case No. S-UM-500-S
)
and) PERB Decision No. 933-S
)
CALIFORNIA STATE EMPLOYEES)
ASSOCIATION,)
)
Exclusive Representative.)
_____)

Appearance: Howard Schwartz, Attorney, for California State Employees Association.

Before Hesse, Chairperson; Caffrey and Carlyle, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California State Employees Association (CSEA) from a regional director's dismissal (attached hereto) of its unit modification petition. CSEA sought the addition of 12 job classifications to Bargaining Unit 11.

The Board has reviewed the dismissal and, finding it to be free of prejudicial error,¹ adopts it as the decision of the Board itself in accordance with the discussion below.

DISCUSSION

In Unit Determination for the State of California (1979) PERB Decision No. 110-S, the Board placed the 12 job classifications at issue in Bargaining Unit 1. In 1985, the

¹The Grain and Commodity Sampler classification noted on page 18 of the proposed decision erroneously referenced Unit 1 rather than Unit 11.

Department of Personnel Administration and CSEA stipulated to exclude several job classifications from Bargaining Unit 1, including those named on CSEA's unit modification petition. Although there were conflicting reasons for entering into the stipulation, the record indicates the stipulation is no longer in effect. As no stipulation between the parties is currently in effect, the Board finds that the job classifications are part of Bargaining Unit 1. Therefore, CSEA has the burden to demonstrate that Bargaining Unit 11 is more appropriate than Bargaining Unit 1. (State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S.)

CSEA argues on appeal that the regional director incorrectly determined agricultural inspectors work out of state office buildings. Although it is true that the inspectors are headquartered in state office buildings, it is noted that their duties also include working at various sites and conducting inspection work at various locations. Nevertheless, we agree with the regional director that based upon the overall review of the record submitted, CSEA has failed to demonstrate that Bargaining Unit 11 is a more appropriate unit.

ORDER

The Board hereby AFFIRMS the determination of the Sacramento Regional Director in Case No. S-UM-500-S.

Member Caffrey joined in this Decision.

Chairperson Hesse's concurrence begins on page 3.

HESSE, concurring: While I agree with the majority and Sacramento Regional Director that the job classifications should remain in Bargaining Unit 1, I write separately to address my concerns.

In Unit Determination for the State of California (1979) PERB Decision No. 110-S, the Public Employment Relations Board (PERB or Board) included the disputed job classifications in Bargaining Unit 1. If there were no stipulation between the parties, these job classifications would still be included in Bargaining Unit 1. Although there were conflicting reasons for entering into the stipulation, the parties' current positions indicate the stipulation is no longer in effect. The California State Employees Association (CSEA) has filed a unit modification petition to include these job classifications in Bargaining Unit 11, while the State of California, Department of Personnel Administration (DPA) opposes the unit modification petition and asserts that these job classifications should be included in Bargaining Unit 1.

Since the Board's original unit determination decision placed the disputed job classifications in Bargaining Unit 1, I conclude these job classifications should remain in Bargaining Unit 1 unless CSEA demonstrates that Bargaining Unit 11 is more appropriate. Consistent with my position in State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S, I find there is a rebuttable presumption that the Board's decision in Unit Determination for the State of California,

supra, PERB Decision No. 110-S is correct. In the absence of evidence that the proposed unit modification is more appropriate, I find the existing Board-created unit must be maintained.

As its primary evidence, CSEA relies upon the duties and responsibilities of the plant quarantine inspectors. As this job classification is in Bargaining Unit 11, CSEA argues that the agricultural inspectors and fruit and vegetable inspectors should also be included in Bargaining Unit 11. CSEA asserts that the job classifications at issue are characterized by:

. . . work which is ministerial, which lacks in depth analytical functions and demands little if any creative skills. These classes contain workers which are seldom, if ever, in office environments. They are not advisors, consultants, coordinators or representatives. They perform no duties which could be characterized as professional. Working in the muck and mire of an inspection station or at a border check point in the cold dead of night, they certainly would not be perceived by the public as the average white collar desk bound, word processing professional. (CSEA's closing argument, p. 4.)

DPA asserts that except for a small number of agricultural inspectors in the Department of Forestry and Fire Protection, the agricultural inspectors work for the Department of Food and Agriculture. DPA contends that CSEA has incorrectly characterized the terms and conditions of employment at border stations as reflective of all the job classifications in the proposed unit modification. DPA argues that the agricultural inspectors generally work a single day shift, Monday through Friday and do not wear uniforms. DPA states that the fruit and

vegetable inspectors may work six days a week, and their work stations at the winery, garlic or onion plants is not a permanent assignment. Rather, the fruit and vegetable inspectors may report directly to a work station, or go to an office and then report to a work station.

In sum, DPA argues that Bargaining Unit 1 has the most experience working with diversified interests and unique groups of classifications, including permanent intermittent and temporary positions. Therefore, the job classifications at issue should remain in Bargaining Unit 1.

In my opinion, the evidence does not overwhelmingly support placement of the job classifications in either Bargaining Unit 1 or 11. Further, the job specifications of agricultural inspectors and fruit and vegetable inspectors are similar to other job specifications belonging to Bargaining Units 1 and 11. (See Vol. I, p. 83 and exhibits.) While the Regional Director's proposed decision seems to reflect this lack of evidence, his characterization of the agricultural inspectors as working out of state office buildings is misleading. The agricultural inspectors are headquartered in state office buildings, but they go out in the field and work at various sites, including border stations. The job specifications for agricultural inspectors and fruit and vegetable inspectors specifically state that the inspection work is performed at various locations.

In conclusion, I find the evidence does not demonstrate that Bargaining Unit 11 is more appropriate than Bargaining Unit 1. Therefore, I conclude that the job classifications at issue should remain in Bargaining Unit 1.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA (DEPARTMENT OF))	Representation
PERSONNEL ADMINISTRATION),)	Case No. S-UM-500-S
Employer,)	(S-SR-1 and 11)
)	
and)	
)	PROPOSED DECISION
CALIFORNIA STATE EMPLOYEES')	(9/11/91)
ASSOCIATION,)	
)	
Exclusive Representative.))	

Appearances: Larry Larsen, Senior Labor Relations Officer, and M. Jeffrey Fine, Deputy Chief Counsel, for the State of California (Department of Personnel Administration); Howard Schwartz, Assistant Chief Counsel, for the California State Employees' Association.

Before Les Chisholm, Hearing Officer.

PROCEDURAL HISTORY

On December 12, 1990, the California State Employees' Association (CSEA) filed a unit modification petition with the Public Employment Relations Board (PERB or Board) seeking to add 11 job classifications¹ to Bargaining Unit 11 - Engineering and Scientific Technicians (Unit 11). The petition was filed pursuant to PERB regulation 32781(a)(1).²

¹The petitioned-for classifications are: Agricultural Inspector I, II and III (Seasonal); Agricultural Inspector II and III (Permanent Intermittent); Processing Fruit and Vegetable Inspector I, II, III and IV (Seasonal); and Processing Fruit and Vegetable Inspector III and IV (Permanent Intermittent).

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32781 provides in pertinent part as follows:

32781. Petition. Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board

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

The State of California, Department of Personnel Administration (Employer) filed its opposition to the unit modification petition on January 22, 1991. A Board agent conducted settlement conferences with the parties on February 6 and April 4, 1991, but a resolution of the dispute was not achieved.

A hearing was conducted on May 6 and 14, 1991. On the first day of hearing, CSEA amended its petition to include the proposed transfer of the classification of Fruit and Vegetable Quality Control Inspector from Bargaining Unit 1 - Administrative,

approval of a unit modification may file a petition in accordance with the provisions of this section.

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its unit(s):

(1) To add to the unit unrepresented classifications or positions;

.....

(c) All affected recognized or certified employee organizations may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

.....

(e) If the petition requests the addition of classifications or positions to an established unit, the Board may require proof of majority support of persons employed in the classifications or positions to be added. Proof of support is defined in section 32700 of these regulations.

Financial and Staff Services (Unit 1) to Unit 11.³

The Employer supplemented the record by submitting Declarations by Shamim Khan and Arnold T. Beck, Jr. on May 28, 1991.⁴ Briefs were filed by both parties, and the case was submitted for decision on July 8, 1991.

POSITIONS OF THE PARTIES

CSEA argues that all the classifications at issue are most appropriately included in Unit 11. CSEA emphasizes that these classes, like those in Unit 11, do not require advanced or specialized knowledge necessary to being considered a professional, and that they similarly work in situations with less responsibility and discretion than do employees in professional positions. CSEA also notes the set hours and shifts worked by these employees, as well as the direct on-site supervision of their work and the fact that they work outside with environmental and safety concerns.

CSEA points to the overlapping duties of agricultural inspectors and Plant Quarantine Inspectors (PQI's),⁵ and alleges that agricultural inspectors have little or no contact with

³The transfer of classifications or petitions from one represented established unit to another is governed by PERB regulation 32781(c). See footnote 2, above. CSEA is the exclusive representative of both Units 1 and 11.

⁴The procedure for post-hearing submission of declarations was stipulated to on the second day of hearing. By letter dated May 29, 1991, CSEA waived its right to request reopening of the record for the purpose of cross-examining Khan and Beck.

⁵This classification is currently included in Unit 11, and its unit placement is not in dispute.

employees outside of Unit 11. Finally, CSEA argues that any effect of the original unit placement of the agricultural inspector and processing fruit and vegetable inspector classifications was obviated by the 1985 agreement to exclude the classes from Unit 1.

The Employer contends that the classification of Fruit and Vegetable Quality Control Inspector should remain in Unit 1 because CSEA has failed to meet its burden in support of a change in unit placement. Concerning the agricultural inspector and processing fruit and vegetable inspector series classes, the Employer argues they should be reinstated in Unit 1.

In support of the latter point, the Employer points to the seasonal and intermittent nature of the classes and contends that Unit 1 has more experience in dealing with the diverse interests of such groups. The Employer also contends that CSEA attaches too much importance to the nature of the duties of agricultural inspectors at border stations, and that CSEA has failed to demonstrate any compelling reason for these classifications to be placed in Unit 11 rather than Unit 1.

FINDINGS OF FACT

General

All 12 classifications at issue in the instant case were placed by the Board, in the initial unit determination for employees of the State of California, in Bargaining Unit 1 - Administrative, Financial and Staff Services. (Unit Determination for the State of California (1979) PERB Decision No. 110-S.) In

1985, the Employer and CSEA stipulated to the exclusion of several classifications from Unit 1, including the 11 classifications named on the December 12, 1990 petition.

The 1985 agreement did not include any factual stipulation to justify the exclusion nor a statement of the reason or basis for the exclusion, but did provide that employees in the agricultural inspector and processing fruit and vegetable inspector series who were employed for more than five consecutive years would be converted to a permanent intermittent appointment.

All of the petitioned-for classifications, except Fruit and Vegetable Quality Control Inspector, are denoted as either seasonal or permanent intermittent. Each of the permanent intermittent class specifications in this case include the characteristic that "[e]mployment in this class is on a noncareer basis." (Joint Exhibit Nos. 8, 9, 11 and 12.) The parties also stipulated to certain characteristics of seasonal classifications, including that "they cannot compete in promotional examinations." (Vol. I, 18:26.)⁶ There was, however, testimony by Martina Haleamau, an Employer witness, concerning "upward mobility options" for agricultural inspectors into scientific classes found in Bargaining Unit 10 - Professional Scientific (Unit 10). (Vol. II, 17:15-17 and 22:17-19.)

⁶Cites to the Reporter's Transcript include the transcript volume followed by the applicable page number and line numbers.

Bargaining Unit 1

Bargaining Unit 1 includes over 26,000 employees in nearly 600 job classifications. The list of job titles includes such "white collar" jobs as administrative assistant, auditor, analyst, statistician, planner, editor, consultant, bank examiner, computer operator and legal assistant, but also includes fruit and vegetable quality control inspector, meat food inspector, feed, fertilizer and livestock drugs inspector, grain and commodity sampler, grain and commodity inspector, pesticide use specialist and egg and poultry quality control inspector.

Unit 1 employees hold appointments on a permanent, limited term or temporary basis, and with a time base that is full or part-time or intermittent; work in 56 of the 58 counties in California and out-of-state;⁷ and are, for overtime purposes, found in work week groups (WWG) 1, 2, 2A, 4A, 4B, 4C and 4D.⁸ There is at least one State operation with Unit 1 employees which operates on a year round, 24-hour-a-day basis.

While the focus of Unit 1 concerns is on professional issues,⁹ Unit 1 employees do have various safety concerns. Safety issues are dealt with on either a local or statewide basis depending on the nature of the concern.

⁷More than one-half of Unit 1 employees are found in Sacramento County.

⁸More than one-half of Unit 1 employees are WWG 4A.

⁹CSEA and the Employer have agreed to refer to Unit 1's title as "Professional Administrative, Financial and Staff Services," but Board approval of this change has never been requested.

Bargaining Unit 11

Bargaining Unit 11 includes over 2,000 employees in more than 150 job classifications. Job classes in Unit 11 include plant quarantine inspector, architectural assistant, automotive emission test specialist, electrical construction inspector, museum technician, petroleum production inspector, tax area delineator, transportation engineering technician and mechanical construction inspector.

Unit 11 employees are appointed on a permanent, limited term or temporary basis, either full or part-time; work in 53 of the 58 California counties and out-of-state;¹⁰ and are found in WWG 1, 2, 4A, 4B, 4C or 4D.¹¹

Issues of concern to Unit 11 employees vary by occupational group but generally include pay, classification, career and promotional paths, education and training, new technology, facilities, equipment and clothing and health and safety (including exposure to pesticides). For many employees, Unit 11 is a "transitional" unit, with promotional opportunities requiring transfer to a different bargaining unit, including to Unit 10.

Plant Quarantine Inspectors

As noted above, one classification within Unit 11 is that of PQI. PQI's are employed by the Department of Food and

¹⁰The largest concentration of Unit 11 employees -- more than one-third of the unit -- is in Sacramento County.

¹¹More than one-half are in WWG 2, and are under coverage of the Fair Labor Standards Act.

Agriculture, Division of Plant Industry, at border stations concerning the detection of agricultural pests and the effort to prevent their entry into California. PQI's inspect automobiles and other vehicles, either physically or by way of verbal inquiries of the driver, for plant materials or produce which are to be excluded; inspect shipments of fruits, nuts and vegetables to determine compliance with fruit and vegetable standardization requirements; issue citations; identify insect and disease pests; and coordinate and cooperate with law enforcement officials concerning movement of illegal drugs or commodities and stolen motor vehicles. PQI's are also responsible for related administrative duties (reports, record keeping and communications with appropriate county and other officials).

" The border stations operate on a 24-hour, year round basis, and employees working at a border station frequently work outdoors exposed to harsh weather conditions. PQI's are in WWG 2. PQI's often work with agricultural inspectors, who perform substantially the same duties at the border stations. Border station employees wear uniforms. Supervision is normally by a Plant Quarantine Supervisor I or II, though PQI's may act as lead workers on a shift and, at a smaller border station, an agricultural inspector may work alone on a shift.

Entry to the PQI class requires experience as an
Agricultural Services Technician II (Range B)¹² and some college

¹²This class is also included in Unit 11.

credits, or one season's experience (generally three months) in agricultural inspection or pest control work.

The work-related concerns of PQI's and agricultural inspectors at border stations include exposure to pesticides and asbestos, protective clothing and equipment and safety of facilities.

The Petitioned-For Classifications

a. Agricultural Inspectors

The numbers of employees in all five agricultural inspector classifications fluctuates seasonally, but there are roughly 200 such employees. Entry to the class series (as an Agricultural Inspector I (Seasonal)) requires either one season (three months) of pertinent experience or completion of a one-semester college course in an agricultural subject (or one year of applicable general college work).

Most agricultural inspectors are employed in the Department of Food and Agriculture, but the class is also currently utilized by the Department of Forestry and Fire Protection, where employees in the class work on the Dutch Elm disease project. Within the Department of Food and Agriculture, agricultural inspectors work in four divisions: Animal Industry, Pest Management, Plant Industry and Inspection Services.

Agricultural inspectors in the Division of Animal Industry assist livestock inspectors in inspection of animal quarantine practices at slaughterhouses, stockyards and feed lots, and

assist brand inspectors at stockyards in identifying brands.¹³ Agricultural inspectors in this division also work with veterinary medical officers; generally work a Monday through Friday, 8:00 a.m. to 5:00 p.m. schedule, do not wear uniforms and work out of State office buildings in San Bernardino, Redding, Fresno, Los Angeles and San Diego.

Agricultural inspectors in the Division of Pest Management assist pest management specialists and environmental health specialists in pesticide residue inspection work and pesticide quality control work. Their work schedule is generally on a Monday through Friday, 8:00 a.m. to 5:00 p.m. basis. They do not wear uniforms, and work out of State office buildings in Sacramento, Fresno and Los Angeles.

Agricultural inspectors in the Division of Plant Industry work in a variety of settings. As discussed above, agricultural inspectors work at border stations, performing pest exclusion tasks, and perform essentially the same duties under the same conditions as PQI's. They also work in this division with agricultural biologists, performing duties relating to the control and eradication of the pink bow worm; and work with biologists, entomologists and plant Pathologists doing surveys for exotic pests and weeds, trap fabrication and delineating maps of eradication areas. Except at the border stations, they normally do not wear a uniform and work a standard Monday through

¹³The livestock inspector and brand inspector classifications are in Bargaining Unit 7 - Protective Services and Public Safety.

Friday, 8:00 a.m. to 5:00 p.m. schedule. Their work locations include Fresno, Sacramento, Redding, Fresno, Los Angeles, San Diego and Phoenix, Arizona.

In the Division of Inspection Services, agricultural inspectors work both in chemical lab services and in the fresh products for processing branch. The one employee now in chemical lab services, located in Sacramento, performs non-technical duties such as cleaning laboratory equipment and works with agricultural chemists and student assistants.

b. Processing Fruit and Vegetable Inspectors and Fruit and Vegetable Quality Control Inspectors

The fresh products for processing branch of the Division of Inspection Services employs, in addition to agricultural inspectors, fruit and vegetable quality control inspectors (about 45 employees) and processing fruit and vegetable inspectors (from 10 to 14 employees). The branch provides a non-mandatory sampling, grading, inspection and certification service for industries. While there is variation in which industries solicit this service, most work currently is with wineries (wine grapes), garlic, onions and canning tomatoes.

Employees inspect produce for compliance with the processing fruit and vegetable standards of the Agricultural and Administrative Codes, looking at such issues as defects, maturity and the presence of foreign material; select and inspect samples at markets, wholesale distribution points, processing plants or wineries, fields or inspection stations; issue certifications if

compliance is found; reject shipments not in compliance; keep records and may become involved in helping to settle disputes between growers and processors. The grading of produce is utilized in setting the price to be paid.

Employees in this branch are generally found in the Central and Napa Valley areas.¹⁴ Workload fluctuates seasonally and, when there is work for seasonal and permanent intermittent employees, there is often overtime. Exposure to pesticides is one work-related concern of employees in this branch.

Entry to the processing fruit and vegetable inspector series requires two seasons experience in growing, harvesting, grading, packing, sorting and/or inspecting of fruits and vegetables for processing, but relevant education can substitute in part for the experience requirement. The minimum qualifications for a Fruit and Vegetable Quality Control Inspector are six months experience as an Agricultural Services Technician II (Range B) and nine semester units of job-related college course work, or six months experience in the State's Fruit and Vegetable Quality Control Program, or two years experience in growing, harvesting, grading, packing or inspecting fruits, nuts or vegetables.

¹⁴There was also testimony concerning fruit and vegetable quality control inspectors who work in Banning, performing duties similar to those of PQI's at border stations. Given the persuasive evidence that these two classes are solely employed within different divisions of the Department of Food and Agriculture, this testimony is not relied upon for the decision in this matter.

ISSUES

1. What effect, if any, did the 1985 agreement to exclude the agricultural inspector and processing fruit and vegetable inspector classifications from Unit 1 have on the Board's original unit placement of these classifications?

2. Should the agricultural inspector and processing fruit and vegetable inspector classifications be placed in Unit 11 or Unit 1?

3. Should the classification of fruit and vegetable quality control inspector be transferred from Unit 1 to Unit 11?

DISCUSSION

The 1985 Agreement

It is the policy of the Board to encourage voluntary settlement of disputed issues in representation cases. The Board has held, however, that where it has jurisdiction in a case, stipulations between the parties will be examined to determine if the stipulations are consistent with the relevant statute and established Board policies. An agreement affecting unit determination will not be accepted "unless there are facts on the record which would enable [the Board] to find the unit appropriate." (Centinela Valley Union High School District (1978) PERB Decision No. 62.)

Here, the 1985 agreement did not include any factual stipulations in support of the unit modification. Even now, the

testimony of the Employer's and CSEA's witnesses is at variance as to the reasons for or basis of the agreement.¹⁵

Retroactive approval of the 1985 stipulation, which CSEA in effect requests, cannot be granted. Thus, for purposes of this decision, the agricultural inspector and processing fruit and vegetable inspector classifications must be considered as placed

¹⁵CSEA agreed to the exclusion due to the seasonal nature of the job classifications, and because the employees were difficult to represent in a unit where the emphasis was on "professional" and "white collar" issues. Unit 1, according to CSEA, is generally difficult to represent, however, due to its size, the service-wide nature of many of its classifications and the large number of specialized classes within it.

The Employer proposed and agreed to the exclusion based on both a belief that the employees in question were not covered by the Dills Act and a desire to save on operational costs and have greater flexibility over employment issues.

Representation history and community of interest are relevant criteria for determination of proper unit placement, and are factors considered, below, in this decision. Such factors are not appropriate to consideration of questions of exclusion, however. Employees are excluded only if found to be managerial, supervisory or confidential, or not subject to coverage by the relevant statute. (See, for example, In Re the State Employer-Employee Relations Act. Phase III Unit Determination Proceeding (1979) PERB Order No. Ad-79-S, and Unit Determination for the State of California (1980) PERB Decision No. 110c-S.)

Concerning the Employer's argument as to statutory coverage, the Board earlier held, in Unit Determination for the State of California (1981) PERB Decision No. 110d-S (110d-S). that certain State employees were not "civil service employees," by reason of certain characteristics common to seasonal employees, and thus were not subject to coverage under the Ralph C. Dills Act (Dills Act; Government Code section 3512 et seq.). However, in State of California (Department of Personnel Administration). (1990) PERB Decision No. 787-S, the Board overruled 110d-S on this point, finding that seasonal employees are both civil service employees and covered by the Dills Act. (See, also, State of California (Department of Personnel Administration) (1991) PERB Decision No. 871-S.) Thus, this factor, even if stipulated to in 1985, would not allow approval of the stipulated exclusion.

by the Board in Unit 1, with CSEA seeking to change their unit placement.

Unit Placement -- Agricultural Inspectors and Processing Fruit and Vegetable Inspectors

The Dills Act, at Government Code section 3521(b), provides guidance to the Board in determining appropriate units for State employees. The criteria include but are not limited to: the internal and occupational community of interest; the history of representation; commonality of skills, working conditions, duties, training requirements and supervision; the effect the projected unit would have upon the meet and confer relationship and efficiency of operations; and the size of the proposed unit and its effect upon employee representational rights.

In establishing Unit 1, the Board described the employees placed in it as performing "essentially administrative functions, in order to effectuate state and departmental policies and programs." (Unit Determination for the State of California (1979) PERB Decision No. 110-S.) The Board proceeded to describe the characteristics of this unit as follows:

Almost all employees in the administrative unit have similar working conditions; they usually work regular hours in an office environment. Overtime is rarely required. . . .

The work of the vast majority [of] employees in the classifications in the administrative unit involves gathering information, analyzing that information, and making decisions or recommendations based on that information. Even when the work performed is relatively routine, it involves a certain amount of discretion and judgment.

Specific skills required differ among classifications, but all require the ability to communicate effectively orally and in writing, to analyze data, and to apply data to specific situations. Much of the work requires the ability to work without direct guidance.

Most classifications require some post-secondary education. While many require a college degree or substantial experience, the majority do not require the advanced specialized knowledge necessary to be considered a professional position. (Id.; emphasis added.)

The Board described the positions in Unit 11 as follows:

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.

.....

[W]hile 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. . . .

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. (IA.; emphasis added.)

"In order to rebut the presumptive validity of the original state unit determination, the petitioning party must show that its proposed modification is more appropriate." (State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S; emphasis in original.) Neither the original unit placement nor the proposed modification is required to be perfect or the most appropriate. (Id. , citing Antioch Unified School District (1977) EERB¹⁶ Decision No. 37 and Regents of the University of California (1986) PERB Decision No. 586-H.)

To the extent CSEA rests its argument on the nonprofessional status of the employees at issue, their case is unpersuasive given the explicit finding of the Board that Unit 1 is not composed exclusively of professional employees. There was no persuasive, or even very specific, evidence introduced concerning a difficult history of representation of the classes at issue.

Probably the most persuasive element of CSEA's case concerns the working conditions of the employees. Whether at a border station, or in a stockyard, or outside an onion processing plant or winery, or in an agricultural chemist's laboratory, the work setting of these employees is precisely as described by the Board as typical for Unit 11. On the other hand, there is also

¹⁶Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

considerable evidence that many of these employees report to and work out of a more typical office setting, and there are other Unit 1 employees who do not work behind a desk all day. See, e.g., the job descriptions for Feed, Fertilizer and Livestock Drugs Inspector and Grain and Commodity Sampler. (Joint Exhibit Nos. 24 and 25, respectively.) Likewise, while there is persuasive evidence that all the employees at issue would share health and safety concerns, particularly in the area of exposure to pesticides, this factor is not sufficient to establish a separate or distinguishable community of interest which would warrant the unit modification requested.

The evidence that, at border stations, agricultural inspectors work only with Unit 11 employees (namely, plant quarantine inspectors) is not as compelling -- or one-sided -- as CSEA asserts. The record is replete with evidence of agricultural inspectors who work side-by-side with employees found, inter alia, in Bargaining Units 7 and 10. Concerning the processing fruit and vegetable inspectors and fruit and vegetable quality control inspectors, the evidence does not reveal any pattern of work with employees in Unit 11 (or any other State bargaining unit).

The evidence concerning the educational requirements for disputed employees is likewise not conclusive. Many of the classifications include, at least as an optional requirement, college level course work. Such a requirement is as likely to be found among Unit 1 employees as Unit 11.

The record, on balance, concerning promotional or career paths of employees in disputed classes is not persuasive as a factor in support of the requested unit modification.

CSEA also overstates the extent to which the employees at issue work under direct supervision with little or no discretion. Ernest Tracy, testifying for CSEA, indicated that agricultural inspectors sometimes "run a complete shift by themselves" at the smaller border stations. (Vol. I, 103:17-19.) Employees in higher levels of classification assume greater responsibilities and discretion. For example, the Processing Fruit and Vegetable Inspector IV (Permanent Intermittent) is responsible for inspection duties but also "discusses and settles difficult disputes between growers and processors" and "recommends and implements policy in the enforcement of the provisions of the processing fruit and vegetable standards." (Joint Exhibit No. 9.) Such duties are well within the job characteristics discussed by the Board as typical of Unit 1 positions.

For all of these reasons, the necessary conclusion here is that agricultural inspectors and processing fruit and vegetable inspectors should remain in Unit 1. This placement may not be "perfect," but the evidence available here does not offer sufficient rationale for disturbing the unit placement originally determined to be appropriate by the Board.

Fruit and Vegetable Quality Control Inspector

As noted in argument by the Employer, very little information was offered by CSEA concerning the classification of

Fruit and Vegetable Quality Control Inspector. The evidence does clearly establish, however, that this classification is appropriately placed in the same unit as the processing fruit and vegetable inspectors. Employees in these classes share similar duties, supervision, working conditions and hours, education and experience requirements and health and safety concerns. Given the findings set forth above, and the record as a whole, the proposed transfer of the Fruit and Vegetable Quality Control Inspector classification from Unit 1 to Unit 11 must be denied.

CONCLUSION AND PROPOSED ORDER

Based upon the foregoing findings of fact, the discussion, and the entire record of this proceeding, the California State Employees' Association's unit modification petition is DENIED.

It is hereby ORDERED that the following classifications are to remain or be included in State Bargaining Unit 1 -
Administrative, Financial and Staff Services: Agricultural Inspector I (Seasonal), Agricultural Inspector II (Seasonal), Agricultural Inspector III (Seasonal), Agricultural Inspector II (Permanent Intermittent), Agricultural Inspector III (Permanent Intermittent), Processing Fruit and Vegetable Inspector I (Seasonal), Processing Fruit and Vegetable Inspector II (Seasonal), Processing Fruit and Vegetable Inspector III (Seasonal), Processing Fruit and Vegetable Inspector IV (Seasonal), Processing Fruit and Vegetable Inspector III (Permanent Intermittent), Processing Fruit and Vegetable

Inspector IV (Permanent Intermittent) and Fruit and Vegetable
Quality Control Inspector.

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

Dated: September 11, 1991

Les Chisholm
Hearing Officer