

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATE OF CALIFORNIA,

Employer,

and

IT BARGAINING UNIT 22,

Petitioner,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1000, CSEA,

Exclusive Representative.

Case No. SA-SV-165-S

PERB Decision No. 2178-S

May 23, 2011

Appearances: Lyle Hintz, Unit Representative, for IT Bargaining Unit 22; Patricia Cano, Staff Attorney, for Service Employees International Union, Local 1000, CSEA.

Before Martinez, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by IT Bargaining Unit 22 (IT Unit 22 or Petitioner) to the proposed decision (attached) of an administrative law judge (ALJ). The ALJ dismissed IT Unit 22's petition to sever a group of Information Technology (IT) classifications from State Bargaining Unit 1 (Professional, Administrative, Financial, and Staff Services) (BU1) because IT Unit 22 failed to establish that its proposed unit was more appropriate than BU1.

The Board has reviewed the proposed decision and the record in light of IT Unit 22's exceptions, Service Employees International Union, Local 1000, CSEA's (SEIU) response thereto, and the relevant law. Based on this review, we find the proposed decision to be well-reasoned, adequately supported by the record, and in accordance with applicable law.

Accordingly, the Board adopts the proposed decision as the decision of the Board itself, as supplemented by the discussion below.

DISCUSSION

Petitioner raises five exceptions to the ALJ's proposed decision. Other than one regarding a minor factual error,¹ the exceptions are without merit for the following reasons.

1. SEIU's Alleged Conflict of Interest

Petitioner contends the proposed decision does not address sufficiently its argument that SEIU has a conflict of interest that prevents it from adequately representing IT employees. According to Petitioner, automation that results from the work of IT employees necessarily eliminates non-IT positions in BU1 and other State bargaining units represented by SEIU. Petitioner asserts that SEIU thus has a conflict between protecting non-IT employees' jobs and adequately representing the interests of IT employees.

The record fails to show that the work of IT employees ever resulted in the elimination of non-IT positions. Petitioner's witnesses Carter and Christopher Paulsen testified that automation has enabled non-IT employees to become more productive, such as by processing more claims per hour; neither testified to any occasion when non-IT positions were eliminated as a result of automation. At the same time, Carter and Robert Jenkins, another Petitioner's witness, testified that automation has eliminated IT positions. Thus, it is IT positions, not non-IT positions, that have suffered at the hands of automation. Accordingly, Petitioner has not established there is a conflict between the interests of IT employees and non-IT employees that precludes SEIU from effectively representing both groups as part of BU1.

¹ The ALJ found that only two of Petitioner's witnesses had college degrees in IT-related fields. The hearing transcript shows that Marlene Carter (Carter), another of Petitioner's witnesses, holds a bachelor of science degree in computer science from Sacramento State University. Petitioner's exception is thus valid; however, this minor factual error does not alter our conclusion that IT Unit 22's petition must be dismissed.

2. Judicial Notice

In its post-hearing reply brief, Petitioner asked the ALJ to take judicial notice of IT Policy Letter 09-05, Agency Information Officer and Department Chief Information Officer Responsibilities (IT policy letter), issued by the Office of the State Chief Information Officer (CIO) on June 26, 2009. The brief provided a citation to the document on the CIO's website but a hard copy of the document was not attached. The ALJ declined to take judicial notice of the document and treated the portion of the IT policy letter quoted in the brief as argument.

Petitioner contends the ALJ improperly declined to take judicial notice of the IT policy letter. Evidence Code section 452, subdivision (c) allows a court to take judicial notice of official acts of the executive department of a state. Publications and bulletins issued by a State agency are subject to judicial notice under this code section. (*Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 753, fn. 1.) The IT policy letter is an official letter of the State CIO directed to agency and department heads. It is thus subject to judicial notice under Evidence Code section 452, subdivision (c).

Nonetheless, PERB has declined to take judicial notice of documents that are of no probative value to the issues before it. (*The Regents of the University of California, University of California at Los Angeles Medical Center* (1983) PERB Decision No. 329-H.) The excerpt of the IT policy letter in Petitioner's reply brief states:

'Employees and Contractors: All state employees in information technology classifications, and all other state employees or contractors performing IT activities and/or functions must be in a direct reporting relationship to the appropriate Agency or department CIO.'

Petitioner presented the IT policy letter to counter evidence at the hearing that some IT employees reported to non-IT supervisors or managers. Common lines of supervision are one factor PERB considers in determining whether employees share a community of interest.

(*Elk Grove Unified School District* (2004) PERB Decision No. 1688.) Thus, the IT policy letter is relevant to an issue before the Board in this matter.

The fact that IT employees will now report directly to IT supervisors or managers does not overcome the overwhelming evidence in the record that the classifications Petitioner seeks to sever share a community of interest with other BU1 employees. As noted in the proposed decision, IT employees will still interact on a regular basis with other BU1 employees, as well as employees in other bargaining units; still share similar working conditions, qualifications, skills, and duties with other BU1 employees; and still have the same salary structure, benefits, leave, promotion, and discipline procedures as other BU1 employees. Thus, the change in lines of supervision, while a relevant factor, is not a determinative one in this case.

3. Weight of Testimony

Petitioner argues that the ALJ erred in giving greater weight to testimony by witnesses who did not want IT classifications severed from BU1 than to testimony by witnesses with longer State service who supported severance. Petitioner points to the ALJ's discussion of the testimony of SEIU witness Kevin Curtis (Curtis), a six-year State employee. Curtis testified that, although initially supportive of the severance effort, Curtis came to oppose severance after becoming more involved with SEIU as first a steward, and then a district and classification bargaining unit representative. He also testified that he believed a larger unit was better able to challenge outsourcing of bargaining unit work. The ALJ's recitation of Curtis' testimony was not a factual finding that employees opposed severance, but merely an example of one employee who had changed his mind on the matter.

Nonetheless, the ALJ ruled later in the proposed decision that evidence of employee opposition to severance outweighed evidence of employee dissatisfaction with SEIU. When a party files exceptions to a proposed decision, the Board reviews the evidence de novo and is

entitled to draw its own factual conclusions. (*California Teachers Assn. v. Public Employment Relations Bd.* (2009) 169 Cal.App.4th 1076, 1086-1087.) Having thoroughly reviewed the entire record in this matter, we conclude the ALJ properly weighed the evidence presented by the parties at hearing. However, even if the ALJ erred in giving greater weight to witnesses who opposed severance, the error would not change the outcome in this case because employee dissatisfaction is only one factor PERB considers in severance cases (*State of California (Department of Personnel Administration)* (1993) PERB Decision No. 1025-S), and there is ample evidence in the record to support dismissal of the petition on other grounds.

4. Failure to Implement Memorandum of Understanding (MOU) Provisions

Petitioner further contends the ALJ erred by failing to include in her findings of fact evidence of SEIU's inability to implement provisions in its last two MOUs with the State concerning reclassification of IT employees and establishment of an IT Joint Labor-Management Apprenticeship and Training Committee. According to Petitioner, this evidence establishes that SEIU does not adequately pursue the interests of IT employees.

Petitioner agrees that the reclassification and apprenticeship committee provisions are beneficial to IT employees, but points out that SEIU has failed to implement them during the ten years since they were negotiated. As for the reclassification study, SEIU witnesses testified that SEIU stopped the initial reclassification effort because it would have been unfavorable to unit members. Witnesses also testified that the revived process was put on hold while SEIU and the State negotiated successor MOUs. Under the MOU, the apprenticeship committee was not to be implemented until the reclassification was complete. Nonetheless, SEIU and the State met to discuss preliminary aspects of the committee so that it could be implemented more quickly after reclassification.

Contrary to Petitioner's claim, this evidence does not show that SEIU is disregarding the interests of IT employees. It instead establishes that the delay in implementing both MOU provisions was due to protracted negotiations over successor MOUs and SEIU's desire to make the reclassification as favorable to IT employees as possible. This falls far short of showing that the interests of IT employees "were trampled upon or ignored" by SEIU, such that severance is necessary to prevent abrogation of their rights. (*State of California (Department of Personnel Administration)* (1989) PERB Decision No. 773-S.)

ORDER

The severance petition in Case No. SA-SV-165-S is hereby DISMISSED.

Chair Martinez and Member McKeag joined in this Decision.

withdrawing their support; the Union also questioned the appropriateness of the proposed unit because it included non-IT job classes² and excluded five IT classes. On July 11, SEIU further opposed the petition because: IT Unit 22 was not an employee organization; fraud and misrepresentation in collecting signatures on the petition; more than 300 employees signed revocation cards withdrawing their support for severance; the Union's history of representation of IT employees in Unit 1; the petition was under-inclusive by seven job classes and over-inclusive by nine classes; the proposed unit was inappropriate; and contract bar in a June 17, 2006 tentative agreement with the State of California (State) employer. On July 11, the State employer also opposed the petition due to: tentative agreement/contract bar; the petition was over-inclusive by five job classes and under-inclusive by seven classes; failure to provide proof of majority support because non-represented employees signed the petition; community of interest of IT classes in the proposed unit with other Unit 1 classes; a stable negotiating relationship with the current exclusive representative; and fragmentation and proliferation of the existing State bargaining units. On August 3, Petitioner filed a rebuttal to the State and SEIU oppositions, and withdrew nine classes from the petition. On August 14, SEIU responded to IT Unit 22's rebuttal, asserting, *inter alia*, that Petitioner could not cure the defective petition by removing the disputed job classes.

On August 25, 2006, the Board agent determined that IT Unit 22 qualified as an employee organization under PERB precedent; overruled the contract bar arguments and found the petition timely filed; and rejected the fraud and misrepresentation contentions. The Board agent, however, dismissed the petition for failure to provide majority proof of support based on more than 360 employee revocation cards and PERB precedent. The Board agent did not address unit appropriateness because proof of support was not sufficient.

² Research Analyst classes and Telecommunications class series.

On September 7, 2006, Petitioner requested an extension of time to appeal the dismissal. On September 8, SEIU opposed the extension. On September 8, the PERB Appeals Assistant granted the extension. On September 25, IT Unit 22 appealed the dismissal to the Board. After requesting and receiving an extension of time, the Union opposed the appeal on October 30. The State employer did not respond to the appeal.

On November 6, 2007, in *State of California (2007)* PERB Order No. Ad-367-S, the Board reversed the Board agent's dismissal of the severance petition, finding there was no legal basis to use the revocation cards to offset proof of support. The Board remanded the case to the PERB General Counsel to determine the sufficiency of majority support for the petition without the revocation cards. SEIU requested an extension of time to request reconsideration of the Board decision which was granted on November 30, 2007.³

On December 18, 2007, the Board agent found the severance petition was timely filed before the existence of the then-current Unit 1 Memorandum of Understanding (MOU) between the State employer and SEIU, and proof of support was sufficient for the petition.

An informal settlement conference was conducted on February 26, 2008, but the dispute was not resolved. A prehearing conference was conducted on May 1, 2008. Formal hearing was held on August 5 and 6, and October 27, 28, 29, and 30, 2008; and March 2, 3, and 4, 2009. On October 28, 2008, after Petitioner rested its case in chief, SEIU moved to dismiss the petition for failure to meet its burden of proof that the proposed unit was more appropriate than current Unit 1. The State employer joined in the motion to dismiss. The motion was taken under submission.

On October 30, 2008, Petitioner requested to amend the petition to delete three job classes of 124 employees in the Telecommunications series. On December 1, the State

³ The representation case file does not contain SEIU's request for reconsideration.

employer did not oppose the amendment. On December 1, SEIU opposed the amendment, arguing that it was unfair to delete the classes and employees after using them to meet the requisite proof of support for the petition. The amendment was granted, and the classes were deleted from the petition at the March 2, 2009 hearing. (PERB Reg. 40240 (c); *State of California (Department of Personnel Administration)* (1989) PERB Decision No. 773-S).⁴

After preparation of the transcript and receipt of all post-hearing briefs, the case was submitted for decision on September 2, 2009.⁵

POSITIONS OF THE PARTIES

Petitioner asserts that the petition should be granted because more than 50 percent of employees in IT job classes signed it, and two-thirds of Franchise Tax Board (FTB) IT workers surveyed in January 2009 also expressed their desire to sever. SEIU is negligent in representing IT workers, as shown by its: inadequate fight against contracting out IT personal services and consulting contracts; failure to enforce contract language protecting IT employees; failure to bring the IT reclassification to completion after more than ten years; and failing to implement the IT apprenticeship program set forth in the MOU. IT training is inadequate despite a contractual Joint Labor-Management IT Training Committee. IT workers have a separate supervisory structure. There have been dramatic changes in IT technology since Unit 1 was established. SEIU has a conflict of interest in representing IT and other classes together because increased automation productivity has reduced the non-IT workforce.

⁴ Unless otherwise indicated, all statutory references are to the Government Code. The Ralph C. Dills Act (Dills Act) is codified at section 3512 et seq. PERB regulations are codified at California Code of Regulations, title 8, sections 31001 et seq.

⁵ Petitioner did not order the transcript. On September 1, 2009, SEIU objected to the inclusion of “new evidence” in, and request for judicial notice of, IT Police Letter (ITPL 09-05) in Petitioner’s rebuttal brief. Judicial notice is not taken of ITPL 09-05 because only a brief excerpt of the document is set forth in the brief. The remaining contentions are treated as argument.

There is no evidence that creation of a separate IT Unit would adversely affect meet and confer relationships; a separate IT Unit would not be the smallest State bargaining unit; and one additional unit is not fragmentation or proliferation. If IT classes are not professional, severance should be granted as a skilled crafts unit under the Dills Act. The disputed IT classes not included in proposed Unit 22 are either vacant, temporary, or instructional classes, and the non-IT classes included perform the same functions as IT employees. The State employer and SEIU do not have a stable bargaining relationship. IT Unit 22 has represented employees seeking severance by this petition for years. There is a community of interest and/or common working environment shared by all nine bargaining units represented by SEIU, but the community of interest of IT employees is distinct. A new IT bargaining unit will allow a smooth transition under the Governor's Reorganization Plan.

SEIU opposes severance. Unit 1 was an appropriate unit when created, and remains appropriate because IT employees continue to perform the same administrative functions and similar duties even after technological changes. The job classes in the proposed unit are not professional; even if they were, the presumption has been rebutted by their inclusion in mixed Unit 1. Petitioner has not met its burden of showing that Unit 22 is more appropriate than existing Unit 1 because the petition includes non-IT classes and excludes IT classes. SEIU has a long, stable bargaining relationship with the State employer. IT employee interests have not been trampled upon or ignored, but have been addressed in: bargaining; representation; anti-contracting out efforts in challenging contracts before the State Personnel Board (SPB) and in legislative activity; and in Union communications. IT employees in the proposed unit share a community of interest with Unit 1 employees. Creation of the proposed unit would have a negative impact on the State because of proliferation. IT Unit 22 has no history of representing IT workers. Petitioner inflates employee support by misstating evidence and deleting classes

from the petition; employee support can be considered only if the proposed unit is more appropriate. Petitioner's claims that SEIU is ineffective in fighting contracting out, and about the IT reclassification, IT apprenticeship program and IT training are not supported by the evidence, and do not establish that IT employee interests have been ignored. Petitioner's claims that IT workers are supervised by IT managers is contradicted by the evidence. Even if technology has changed, Petitioner has failed to show how that makes Unit 22 more appropriate than Unit 1. Petitioner presented no evidence of any conflict of interest by SEIU.

The State employer opposes severance. Unit 1 is the largest State bargaining unit, and Petitioner has not presented any evidence to revisit the original creation of Unit 1 as a broad unit. Public employer concerns over the potential for unit proliferation and fragmentation have been given careful consideration by PERB; to grant severance for IT employees would result in proliferation and fragmentation. An additional burden would be imposed in negotiating and administering labor relations with a new bargaining unit since a contract would need to be negotiated from the "ground up." Two additional severance petitions are now before PERB which could result in 24 bargaining units. A stable bargaining relationship between a public employer and existing employee organizations are important factors not to be lightly disturbed; SEIU and the State enjoy such a relationship, having negotiated ten (10) contracts, not including the tentative agreement of 2009. Original Unit 1 is presumed appropriate, and petitioner must show that proposed Unit 22 is more appropriate than existing Unit 1; proof of majority support does not entitle petitioner to severance. PERB may only grant or deny the severance petition as it is. Petitioner has not produced evidence that the proposed unit has a community of interest separate and distinct from other Unit 1 classes and employees. The Union's internal representational structure accommodates the interests of the different classes within Unit 1.

FINDINGS OF FACT

IT Unit 22 and Unit 1

After the amendments, proposed IT Unit 22 contains 21 job classes and 7,481 employees.⁶ All of the classes except for the Electronic Data Processing (EDP) Acquisition series were in existence when PERB established the State bargaining units in 1979. (*Unit Determination for the State of California* (1979) PERB Decision No. 110-S.)⁷

As of the hearing, Unit 1 contained 45,508 employees in 400 to 450 job classes employed by 120 State agencies, departments, boards, and commissions. Eighty-eight (88) appointing powers employ IT workers, ranging from one employee (eight departments) to 982 employees (FTB). The ten largest departments of IT personnel are: FTB; Employment Development Department (EDD); Department of Technology Services/Teale Data Center (DTS); Department of Transportation (Caltrans); Department of Corrections and Rehabilitation (CDCR); State Compensation Insurance Fund (SCIF); Department of Motor Vehicles (DMV); Department of Health Services/Department of Public Health/Department of Health Care Services (DHS); California Public Employees Retirement System (CalPERS); and Department

⁶ Computer Operations Series: Computer Operator, Computer Operator Specialist I and II – 99 employees. EDP Acquisition Series: Staff and Senior EDP Acquisition Specialist – 31 employees. Information Systems Analyst Series: Assistant, Associate, Staff, and Senior Information Systems Analyst (ISA) (Specialist) – 4330 employees. Information Systems Technician Series: Information Systems Technician (IST) Specialist I and II – 261 employees. Programmer Analyst Series: Associate, Staff, and Senior Programmer Analyst (Specialist) – 1434 employees. Systems Software Specialist Series: Associate and Systems Software Specialist (Technical) I, II, and III – 1092 employees. Programmer: - 55 employees.

⁷ SEIU argues that seven additional IT classes should have been included in IT Unit 22. These are: Programmer Apprentice – unknown; Senior and Instructional Systems Engineer, POST – 3 employees; and Program Systems Analyst Series: Senior, Staff, Associate, and Program Systems Analyst – 29 employees. The Programmer Apprentice class was created in 1981. The two POST classes and the Program Systems Analyst series were established in 1993 and 1995, respectively.

of Justice (DOJ). The percentage of IT employees as part of the total workforce of these departments ranges from 90 percent (DTS) to 10 percent (EDD, SCIF).

History of Unit 1

Dills Act section 3521 establishes the criteria for appropriate State bargaining units for the purpose of collective bargaining.

(b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals; the history of employee representation in state government and in similar employment; the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements; and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the state government, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of state government and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of

representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

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

Applying the above criteria, in *Unit Determination for the State of California, supra*,

PERB Decision No. 110-S, the Board created 20 State bargaining units, including Unit 1.

Describing Unit 1, PERB declared:

ADMINISTRATIVE, FINANCIAL, AND STAFF SERVICES UNIT

The Board finds an administrative, financial and staff services unit to be appropriate. It consists of 1,191 classifications including approximately 32,000 employees. These employees have varied duties in almost every state agency, but they all perform essentially administrative functions, in order to effectuate state and departmental policies and programs. Such functions include accounting and fiscal control, planning, personnel, data processing, research/analysis, and general administration. These employees are appropriately included in a single unit under the statutory criteria because they share a community of interest in working conditions, general job duties, skills, and qualifications.

Almost all employees in the administrative unit have similar working conditions; they usually work regular hours in an office environment. Overtime is rarely required; when it is, some employees are not compensated for it, while almost all others are compensated only on a straight time basis.

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.

The Board acknowledges that there may be some employees included in the unit who might fit the description of professional employees in section 3521.5. However, it finds that the presumption against their inclusion in a unit of nonprofessionals has been rebutted. The Board will not specifically address every classification which might include employees qualifying as professional. In general, the work of these employees is so functionally integrated with that of other administrative employees, their skills, training, and duties so similar as to rebut the presumption, particularly when the record demonstrates no distinct community of interest among them. Even some auditors who may possibly meet the statutory professional criteria are required to have skills and training that are essentially the same as those required by accountants and other employees whose job duties cannot be considered professional. No auditors are required to be certified public accountants; thus they have no special licensing requirements which distinguish them from other employees in the administrative, financial and staff services unit.

On July 7, 1981, the California State Employees Association (CSEA) was certified as the exclusive representative of Unit 1 following a representation election conducted by PERB.⁸

On December 23, 2003, the CSEA Civil Service Division requested an amendment to certification to reflect its affiliation with SEIU. The Board approved the amendment to identify SEIU as the exclusive representative for Unit 1.

Over the years, numerous stipulated unit modification orders have been filed, transferring job classes to and from Unit 1. The State employer filed several unit modification petitions which were later withdrawn or dismissed by PERB. (*State of California (Department*

⁸ Official notice was taken of the PERB Unit 1 representation file, and the file was available for inspection throughout the hearing. Official notice may be taken of PERB files and records. (*State of California (Department of Corrections)* (1995) PERB Decision No. 1107-S).

of Personnel Administration) (1990) PERB Decision No. 787-S; *State of California (Department of Personnel Administration)* (1992) PERB Decision No. 933-S). One decertification petition was dismissed for inadequate proof of support. (*State of California (Department of Personnel Administration)* (1985) PERB Decision No. 532-S). Two fair share fee rescission petitions were dismissed for insufficient proof of support, and one fair share fee election was conducted by PERB.

Two severance petitions have been filed in Unit 1, including this one.⁹

Bargaining History

As of the hearing, the State employer and SEIU had negotiated and executed ten MOUs: 1982-84; 1984-85; 1985-87; 1987-88; 1989-91; 1992-95; 1999-2001; 2002-03; 2003-05; and 2006-08.¹⁰

Six contracts contain provisions specifically for IT classes. The 1987-88 MOU provided special salary adjustments for Programmer Apprentice and Computer Operator. DPA also agreed to study establishing Specialist classes for Programmer I and I, and Associate, Staff, and Senior Programmer Analyst. In the 1989-91 agreement, the maximum salary rate of

⁹ In PERB Case No. SA-SV-172-S, filed November 6, 2008, Petitioner Environmental Professionals in California Government sought to sever 1,100 to 1,200 Environmental Planners, Transportation Planners, and Right of Way Agents in 13 job classes employed by ten State departments; Caltrans is the largest employer. The Board agent dismissed the petition because Petitioner did not meet its burden of showing that the proposed unit shared a community of interest distinct from the rest of Unit 1. The proposed decision became final on November 16, 2010 when exceptions were not filed with the Board (PERB Decision No. HO-R-175-S).

¹⁰ In February 2009, the parties reached tentative agreement on a successor contract, but the agreement was not approved by the Legislature. In October 2010, the parties reached tentative agreement on a successor pact which was approved by the Legislature later that month, and ratified by the Union membership in early November 2010. The 11th State-SEIU MOU has a three-year term (July 1, 2010 through June 30, 2013). Official notice is taken of this information which is posted on the Department of Personnel Administration (DPA) website. (See fn. 8, *supra*.)

Range C was increased for Programmer I; and an additional step was added to the salary range for Programmer II and Associate Programmer Analyst (Specialist). In the 1999-2001 contract, special salary adjustments of 4.79 percent were awarded to Staff Information Systems Analyst (Specialist), Staff Programmer Analyst (Specialist), and Staff EDP Acquisition Specialist; special salary adjustments of 4.95 percent were given to Senior ISA (Specialist), Senior EDP Acquisition Specialist (Technical), and Senior Programmer Analyst (Specialist); and special salary adjustments of 5 percent were granted to Programmer I and II. IT classes assigned to mission critical functions could also receive skills retention differentials of 10 percent to 20 percent monthly. New position allocation standards were implemented, upgrading approximately 1,000 Associate level Programmer Analyst (Specialist), Systems Software Specialist (Technical), and ISA (Specialist) classes. The Programmer Analyst, ISA, and Systems Software (Specialist) series received a Bay Area 5 percent recruitment and retention pay differential. The 2002-03 MOU included special post and bid provisions for FTB Information Systems Technicians and Computer Operators; created the Joint Labor-Management IT Training Committee; set forth the IT Reclassification proposal; and agreed to review IT classification language. The 2003-05 agreement continued the special post and bid provisions for the two FTB IT classes and the Joint Labor-Management IT Training Committee, and created the IT Joint Apprenticeship and Training Committee. The 2006-08 contract added 5 percent to the maximum salary rate of 29 IT classes, and continued the Joint Labor-Management IT Training and IT Joint Apprenticeship and Training Committees.

Organizational Structure

SEIU represents nine State bargaining units.¹¹

¹¹ In addition to Unit 1, the Union represents Units 3 (Professional Educators and Librarians), 4 (Office and Allied), 11 (Engineering and Scientific Technician), 14 (Printing and Allied Trades), 15 (Allied Services), 17 (Registered Nurses), 20 (Medical and Social Services),

Each bargaining unit employee represented by the Union is assigned to one of 50 geographic local chapters called District Labor Councils (DLC). Each DLC has an Executive Board which includes Chapter officers,¹² job stewards,¹³ and District Bargaining Unit Representatives (DBUR) for each of the nine bargaining units.¹⁴ The 50 DBURs are also members of the Statewide Bargaining Advisory Committee (SBAC). The SBAC elects the nine Bargaining Unit Negotiating Committees (BUNC), and the Chairperson (Chair), Vice Chair, and Alternate Vice Chair for each bargaining unit, a total of 19 positions. There are four elected State officers: President, Vice President and Secretary-Treasurer, Vice President for Organizing and Representation; and Vice President for Bargaining. The four State officers, 50 DLC Presidents, and nine BUNC Chairs comprise the Local 1000 Council, the Union's Board of Directors.

In 2008, SEIU established Classification Bargaining Unit Representatives (CBUR) as part of its operating structure.¹⁵ 25 CBURs were created from six job class groups.¹⁶ The 25 CBURs are part of the 75-member SBAC which elects ten CBURs to the nine BUNCs on a regional basis. There are four IT CBURs, three from Sacramento, and one representing state worksites outside Sacramento.

and 21 (Educational Consultant and Librarian). CSEA, and later SEIU, has negotiated Master Agreements with the State employer applicable to all nine bargaining units, and separate pacts for each unit.

¹² The offices of DLC President, Vice President/Chief Steward, and Secretary-Treasurer are elected.

¹³ Job stewards are not elected.

¹⁴ DBURs are elected by the DLC members.

¹⁵ The CBUR structure is a pilot project with a sunset date of April 2011.

¹⁶ The groups are: Administrative and Analytical; Financial; Employment and Health Services; IT; Environmental and Consumer; and Communications and Research.

Marguerita Maldonado (Maldonado), Chair of the Unit 1 BUNC, is a IT worker.¹⁷

Maldonado has served as Unit 1 Chair since 2003. Lyle Hintz (Hintz),¹⁸ Petitioner's representative, and Maldonado served on the bargaining team for the 2002-03 and 2003-05 MOUs; the two also had advisory roles during contract negotiations for the 1999-2001 agreement. Three IT employees were on the nine member Unit 1 bargaining team for the 2003-05 contract, and two IT workers were on the Unit 1 bargaining team for the 2002-03 agreement. IT employees have been represented at the Unit 1 bargaining table since 1999.

Petitioner IT Bargaining Unit 22 presented no evidence about its organizational structure and/or representation of IT employees other than the filing of this severance petition.

Community of Interest Factors

Petitioner IT Unit 22, exclusive representative SEIU, and the State employer stipulated that civil service appointment and promotion is based on the merit principle ascertained by competitive examination, and discipline against civil service employees is by adverse action under the Government Code; both processes are overseen by SPB, and are the same for all civil service employees. The parties further stipulated that all Unit 1 employee salaries; health, dental, and vision benefits; vacation; and paid holiday time are governed by the Master Agreement, and are the same. DPA Labor Relations Officer Deborah True (True), assigned to Unit 1, testified that layoff and furlough provisions are the same for all Unit 1 employees.

¹⁷ Maldonado was a Unit 4 Management Services Technician before promoting to the Unit 1 IT position of Assistant ISA. Maldonado has been an Associate ISA since June 1999.

¹⁸ Hintz worked for the State for 17 years, all in IT classes, until his retirement in December 2005 as a Staff ISA (Specialist) at DTS. Hintz was a SEIU job steward for 13 years, and a chief steward for two years. He was a member of the Union's IT Committee and Chair of the Committee from 1999 to 2005. Hintz was the Chair of the SEIU Contracting Out Committee from 2003 to 2005.

Petitioner's witnesses Robert Jenkins (Jenkins) and Marlene Carter (Carter) supervise IT employees at DTS;¹⁹ 90 percent of the DTS workforce are IT workers. Union witnesses Kevin Curtis (Curtis), Steven McVeigh (McVeigh), and Marie Harder (Harder) work for the Department of Developmental Services (DDS), SCIF, and DHS, respectively; each has been, or is currently supervised by non-IT personnel.

Eleven witnesses testified at the hearing.²⁰ Only Jenkins, Hintz, and Curtis²¹ have spent their entire State service in solely IT classes. The remaining witnesses started in Unit 4 classes and promoted to Unit 1 non-IT classes and/or IT classes, and/or transferred to IT classes from non-IT Unit 1 classes;²² transferred from non-IT Unit 1 classes to IT classes;²³ or were employed only in non-IT classes.²⁴

Only Jenkins and Paulsen have college and/or advanced degrees in IT-related fields. Curtis, McVeigh, and Harder have degrees in areas unrelated to IT. Maldonado has community college credits.

All witnesses testified about the interaction between Unit 1 non-IT and IT classes, and among Unit 1 IT classes and other bargaining unit employees at their appointing power and other departments. McWhirter and Maldonado performed IT functions while employed in

¹⁹ Jenkins has not been a bargaining unit employee for over ten years. Carter, Hintz's sister, did not indicate how long she had been a supervisor.

²⁰ Petitioner called nine witnesses, including Maldonado and himself. The Union presented six witnesses, including Maldonado. True was the only State witness.

²¹ Curtis is a relatively new State employee, with five years of service.

²² Claudia Neal (Neal); Carter; Maldonado; Karen Mease (Mease); True; Steve Kawai (Kawai), who retired in 2001; and Sean McWhirter (McWhirter).

²³ Harder; Rodney Will (Will), who retired in December 2008; Christopher Paulsen (Paulsen); and McVeigh.

²⁴ J.J. Jelincic (Jelincic); and McWhirter.

non-IT Unit 1 and 4 classes, respectively. Kawai worked with non-IT Unit 1 analysts and accountants, and Unit 4 clericals at DTS. Neal worked with over 200 IT and 1000 Unit 1 employees at BOE. While employed in IT positions with DHS, Mease worked with non-IT Unit 1 analysts from 5 percent to 25 percent of the time. While holding IT positions at DHS and Emergency Medical Services Authority, Harder worked with non-IT Unit 1 analysts and accountants, and Unit 4 clerical workers on a daily basis. The employees in IT classes outside of Sacramento had even greater interactions with non-IT Unit 1 coworkers and non-Unit 1 bargaining unit personnel. Will worked in the Fresno State building for EDD and DMV with Unit 1 analysts and program representatives, and Unit 4 clerical employees. McVeigh works for SCIF in the Bay Area, and has daily work-related contact with non-IT Unit 1 program representatives. Curtis works for a DDS Developmental Center in Southern California, and has daily work-related contact with non-IT Unit 1 analysts, and regular contact with Unit 3, 4, 15, and 20 employees represented by SEIU, and Unit 7, 16, 18, and 19 workers represented by other unions or associations.

Employee Dissatisfaction/Support for Severance

Only 40 percent of the FTB IT employees voted in the January 2009 survey. Two-thirds of those favored a separate IT unit.

Paulsen, Vice President/Chief Steward of SEIU DLC 785, questioned the Union's ability to represent IT employees. Neal is disappointed in the Union's progress for IT workers but holds the State more responsible than SEIU for that lack of progress. Jelincic does not support severance. All other Petitioner witnesses were non-represented supervisors, retirees, or non-IT Unit 1 employees.

The Union's witnesses did not support severance for various reasons. They are all white collar workers and have common issues in working conditions and supervision

(McVeigh). IT workers cannot do their jobs without working with non-IT employees (Will). IT and non-IT employees are stronger together and share work-related concerns and issues (Harder). The Union is trying to address bargaining unit issues in Unit 1 by challenging contracting out (Mease). Maldonado provided numerous examples of SEIU activities in negotiating contracts and grievance-arbitration, challenging subcontracting, IT reclassification, IT training, and the IT apprenticeship program.

Curtis' experience is instructive. He signed the severance petition at a Union meeting because printers and licensed vocational nurses had their own bargaining units, and IT workers were lost among 40,000 other Unit 1 employees. His opinion changed after becoming involved with the Union as a job steward, DBUR, and the non-Sacramento CBUR. Curtis now opposes severance because there is strength in numbers, especially in challenging outsourcing.

Impact on State Operations

The State employer opposes creation of a separate bargaining unit as undue unit proliferation and excessive fragmentation. DPA employs six Labor Relations Officers and one Labor Relations Manager to negotiate MOUs and administer contractual grievance-arbitration processes for the 21 units. Establishing a new unit would “exponentially” increase the workload of DPA labor relations representatives,²⁵ and “stretch” existing resources.

²⁵ A severance petition in State Bargaining Unit 7 (Protective Services and Public Safety), filed August 8, 2008, sought to sever 53 peace officer classes in a unit of 2,656 employees, and was being litigated at the time of this hearing. On March 26, 2010, the Administrative Law Judge dismissed the petition because Petitioner Peace Officers of California did not meet its burden of overcoming the rebuttable presumption favoring original Unit 7 as the more appropriate unit. Exceptions were filed in April 2010, and the case is pending before the Board (PERB Case No. SA-SV-171-S). (See also fn. 9, *supra*.)

True is assigned to Units 1, 11, and 12.²⁶ Creation of a new bargaining unit would require the State to bargain an agreement “from the ground up” and/or from “scratch.” The last Unit 1 contract took over nine months to negotiate and reach agreement, even though the expired MOU provided a starting point for bargaining a successor contract.

True reviews 100 to 200 grievances for Unit 1 each year. New contracts also require providing information to the Legislature and Legislative Analyst’s Office, and training State Employee Relations Officers about MOU terms.

Based on her experience, True believes that the State employer and SEIU have a stable bargaining and long-term working relationship that benefits both parties, allowing them to work cooperatively and reach resolution.

ISSUE

Should proposed IT Bargaining Unit 22 be severed from the established Professional Administrative, Financial, and Staff Services Bargaining Unit 1?

CONCLUSIONS OF LAW

Under PERB regulations, an employee organization may petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative. (PERB Reg. 40200(a).) The petition must be accompanied by proof of majority support in the appropriate unit. (PERB Reg. 40200(b).) The Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other

²⁶ True has had the Unit 1 assignment since 2007. Unit 11 is represented by SEIU. (See fn. 10, *supra*.) Unit 12 (Crafts and Maintenance) is represented by the International Union of Operating Engineers (IUOE). True has also been assigned to Units 13 (Stationary Engineers), represented by IUOE; 16 (Physicians, Dentists, and Podiatrists), represented by the Union of American Physicians and Dentists; and 19 (Health and Social Services/Professional), represented by American Federation of State, County, and Municipal Employees.

action as deemed necessary in order to decide the questions raised by the petition. (PERB Reg. 40260(a).)

Section 3541.3(a) authorizes PERB to determine an appropriate unit in disputed cases.²⁷ Section 3521 of the Dills Act also requires an appropriate unit of employees for collective bargaining purposes. In determining the appropriateness of a unit, the Board must follow the criteria set forth in Dills Act section 3521(b) and (c), *supra*. The statutory criteria are not applied rigidly, but must be considered, weighed, and balanced. (*State of California (Department of Personnel Administration)* (1990) PERB Decision No. 794-S.) Community of interest is evaluated based on the totality of circumstances, and is not determined by a checklist of factors. (*Monterey Peninsula Community College District* (1978) PERB Decision No. 76.) The two most important statutory criteria appear to be community of interest and bargaining history, however. (*State of California (Department of Personnel Administration)* (1993) PERB Decision No. 988-S.)

Unit 1 was one of 20 bargaining units created by PERB in 1979. (*Unit Determination for the State of California, supra*, PERB Decision No. 110-S.) Until this June 2006 petition, and the two 2008 petitions for severance in Units 7 and 1, respectively, the Board had received only four requests to alter the statewide units. In *State of California (Department of Personnel Administration), supra*, PERB Decision No. 773-S, the Board dismissed a petition seeking to sever uniformed peace officers from existing Unit 7, a mixed unit of peace officers and non-sworn personnel based on a shared community of interest with bargaining unit employees, a history of stable and successful negotiations, and the potential for proliferation of other law enforcement units.

²⁷ Section 3541.3 is part of the Educational Employment Relations Act (EERA), codified at section 3540 et seq. Section 3541.3 is incorporated by reference in the Dills Act. (Sec. 3513(d).)

In *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 794-S, the Board established a rebuttable presumption in favor of the established 20 bargaining units. A petitioner seeking to modify an existing unit bears the burden of proving that the proposed unit is more appropriate than the established unit. PERB approved a unit modification petition filed by CSEA, dividing current Unit 3 (Library and Education) into two bargaining units, 3 (Professional Educators and Librarians) and 21 (Educational Consultant and Librarian). The rationale was twofold: lack of common skills, working conditions, and duties; and a bargaining relationship between the exclusive representative and employer adversely impacted by the differences between institutional teachers and office-based consultants and librarians.²⁸

In *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 988-S, the Board affirmed the rebuttable presumption standard, dismissing a severance petition to remove 21 psychologist classes from existing Unit 19, based on a shared community of interest with the current unit and a stable bargaining history. In *State of California (Department of Personnel Administration)* (1993) PERB Decision No. 1025-S, PERB again relied on the rebuttable presumption measure when it dismissed a severance petition to remove 172 pharmacists from established Unit 19, based on failure to show a community of interest separate and distinct from the existing unit,²⁹ and the bargaining history

²⁸ Prior Board unit determination decisions remain binding to the extent that circumstances and PERB precedent remain the same. (*Regents of the University of California* (1986) PERB Decision No. 586-H.) The rebuttable presumption is similar to that for public school classified employees. (*Livermore Valley Joint Unified School District* (1981) PERB Decision No. 165; see also *Los Angeles Unified School District* (1993) PERB Order No. Ad-250.)

²⁹ See also *Elk Grove Unified School District* (2004) PERB Decision No. 1688.

and organizational structure of the exclusive representative which accommodated the interests of the pharmacists.

A separate unit is not warranted because a group of employees share a community of interest among themselves when that group forms only a part of a larger group sharing similar conditions of employment and job functions. (*Sacramento City Unified School District* (1977) EERB Decision No. 30;³⁰ *San Diego Unified School District* (1981) PERB Decision No. 170; *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 773-S.)

Petitioner argues that the community of interest for IT Unit 22 is distinct from Unit 1 and all nine bargaining units represented by SEIU. The facts presented at the hearing do not support such a finding. Rather, the evidence shows that employees in the proposed IT unit have much in common and are integrated with other Unit 1 employees. Salaries and benefits, furloughs and layoff provisions, appointment and promotion, disciplinary procedures, and hours of work and working conditions generally are the same for IT and non-IT Unit 1 employees. IT employees are supervised by IT supervisors at only one appointing authority, DTS, a unique department where 90 percent of the workforce are IT personnel. IT employees frequently and regularly interact with other Unit 1 classes and workers in other bargaining units, even at DTS. Only three of the 11 witnesses have been IT employees during their entire State careers; the others either promoted from Unit 4 classes or transferred from non-IT Unit 1 classes into IT jobs. It cannot be concluded that IT employees share a community of interest among themselves, much less a community of interest separate and distinct from other Unit 1 employees.

³⁰ Prior to January 1978, PERB was known as the Educational Employment Relations Board (EERB).

PERB established Unit 1 as a mixed professional and non-professional bargaining unit. (*Unit Determination for the State of California, supra*, PERB Decision No. 110-S.) Only two witnesses have college or advanced degrees in IT-related fields, while three have college degrees in non-IT areas. Thus, the record is devoid of any evidence rebutting the appropriateness of the mixed professional/non-professional Unit 1 originally created by the Board. (See also *State of California (Department of Personnel Administration), supra*, PERB Decision No. 794-S; *State of California (Department of Personnel Administration), supra*, PERB Decision No. 988-S.)

Petitioner contends that severance is justified because dramatic changes in technology have occurred since Unit 1 was established. Petitioner failed to present any evidence that these changes make proposed IT Unit 22 more appropriate than Unit 1, and/or to rebut the presumption in favor of the original unit, however. (*State of California (Department of Personnel Administration), supra*, PERB Decision No. 1025-S.)

The facts introduced at the hearing do not support a unique or separate and distinct community of interest of an IT Unit apart from the community of interest in current Unit 1. Thus, severance would be warranted only if the bargaining history showed that issues of primary concern to IT employees were not addressed in negotiations. Petitioner must demonstrate that the interests of the petitioned-for employees have been trampled upon or ignored, and/or that their representational rights have been abrogated because of the existing Unit 1 structure. (*State of California (Department of Personnel Administration), supra*, PERB Decision No. 773-S.) Stability in bargaining and lack of dissension have been recognized as important factors not to be disturbed lightly. (*Livermore Valley Joint Unified School District, supra*, PERB Decision No. 165.) Even a history of dissension and lack of alternatives to mediate legitimate conflicts do not mandate a separate unit; severance is appropriate only in

circumstances where the history of negotiations and representation demonstrate that such processes are incapable of effectively addressing subjects within the scope of representation. (*Los Angeles Unified School District* (1998) PERB Decision No. 1267; *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 794-S.)

Petitioner asserts that the State employer and SEIU do not have a stable bargaining relationship, and the Union has been negligent in representing IT employees in contracting out, enforcing contract language protecting IT employees, delaying IT reclassification and the apprenticeship program, and providing inadequate training. The evidence is to the contrary. The State and SEIU had negotiated, executed, and ratified ten MOUs as of the hearing, and an 11th successor agreement after the hearing. Six of the ten contracts contained special provisions for IT classes such as special salary adjustments, increased maximum salary rates, new position allocation standards upgrading 1000 Associate level jobs, recruitment and retention differentials, post and bid, the IT reclassification proposal, and the Joint Labor Management IT Training Committee and IT Joint Apprenticeship and Training Committee. IT employees have been represented at the Unit 1 bargaining table since 1999. Maldonado, the Unit 1 BUNC Chair, is an IT employee. Petitioner's representative, Hintz, a former IT employee, served with Maldonado on the Unit 1 bargaining teams for the 2002-03 and 2003-05 contracts, and both were advisors during negotiations for the 1999-2001 agreement. In 2008, SEIU established CBURs as part of the Union's organizational structure, creating 25 CBURs from six job groups; IT is one of the six groups, and four of the 25 CBURs represent IT. There is no evidence that any group was denied the right or opportunity to be an active member in SEIU as a job steward, DLC officer or DBUR, or as a Unit 1 CBUR. DPA reviews 100 to 200 grievances filed by SEIU in Unit 1 each year. Given this history of representation and negotiations, the facts do not demonstrate that the interests of employees in proposed IT

Unit 22 have been trampled upon or ignored, or that their representational rights have been abrogated due to the existing bargaining unit structure.

The evidence of employee dissatisfaction and/or support for the severance petition is minimal and unpersuasive. The evidence opposing severance is more convincing and is therefore given greater weight. Feelings are not facts, however, and the wishes of employees are just one factor for consideration; that factor alone does not make a proposed unit more appropriate than the existing unit. (*State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 1025-S.)

Petitioner has failed to meet its burden of showing that the employees in proposed IT Unit 22 have a community of interest separate and distinct from the rest of existing Unit 1, and that the history of representation requires severance of these employees in a separate bargaining unit. Petitioner has failed to provide sufficient justification for dismantling the bargaining unit originally created by the Board in *Unit Determination for the State of California*, *supra*, PERB Decision No. 110-S, or disrupting existing patterns of representation in Unit 1. Because Petitioner has not rebutted the presumption that the existing unit is more appropriate than the proposed unit, it is unnecessary to decide the issue of over- and under-inclusiveness raised by SEIU. For the same reason, it is also unnecessary to address the potential for unit fragmentation and proliferation, and adverse impact on State operations, raised by the State employer.³¹

³¹ In *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 773-S, and *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 1025-S, the Board concluded there was little and/or unpersuasive evidence that negotiating and administering an additional agreement caused by one new unit would negatively impact State operations and resources. While not untenable, the additional burden on the State is a factor to be considered, especially in the absence of countervailing factors. (*State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 988-S.)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the severance petition in Case No. SA-SV-165-S, *State of California and IT Bargaining Unit 22 and SEIU Local 1000, CSEA*, is hereby DISMISSED.

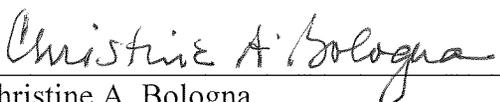
Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

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. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135, subdivision (d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

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 Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)


Christine A. Bologna
Acting Chief Administrative Law Judge