

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



IN THE MATTER OF:)

UNIT DETERMINATION FOR SERVICE)
EMPLOYEES, LAWRENCE LIVERMORE)
NATIONAL LABORATORY, OF THE)
UNIVERSITY OF CALIFORNIA)
PURSUANT TO CHAPTER 744 OF THE)
STATUTES OF 1978 (HIGHER)
EDUCATION EMPLOYER-EMPLOYEE)
RELATIONS ACT))

Case Nos.

SF-RR-1002-H et al.

PERB Decision No. 245b-H

March 8, 1983

Appearances; Philip E. Callis, Attorney for California State Employees Association; Patrick J. Szymanski, Attorney (Beeson, Tayer, Kovach & Silbert) for Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70; Thomas E. Rankin, Attorney for Laborers International Union, Local 1276; Jerrold C. Schaefer and Judith Droz Keyes, Attorneys (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

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

DECISION

On September 30, 1982, the Public Employment Relations Board (PERB or Board) issued a decision¹ under the Higher

*Chairperson Gluck did not participate in this decision.

¹Unit Determination for Service Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/30/82) PERB Decision No. 245-H. See also the decision concerning requests for reconsideration and judicial review, Unit Determination for Technical Employees; Clerical Employees; Service Employees; Professional Scientists and Engineers, Lawrence Livermore National Laboratory; Professional Librarians; and Professional Patient Care Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (2/4/83) PERB Decision Nos. 241a-H and 244a-H through 248a-H.

Education Employer-Employee Relations Act (HEERA)² creating two bargaining units of service employees at the University of California (UC). One unit consisted of the service employees at the Lawrence Livermore National Laboratory (LLNL), and the second consisted of all other service employees throughout the UC system. A hearing was held to determine which employees or classifications should be excluded from the LLNL service unit as supervisory.

In the LLNL service unit, the parties have stipulated to the exclusion of the classification of Protective Service Sergeant (Class Code 655.2) as supervisory. This stipulation is approved by the Board based upon the facts presented by the parties in their stipulation dated July 7, 1982.³

²The HEERA is codified at Government Code section 3560 et seq. All statutory references are to the Government Code unless otherwise indicated.

³The Board does not specifically designate as supervisory the employees the parties have agreed to exclude. In the State Employer-Employee Relations Act, Phase III, Unit Determination Proceeding (10/18/79) PERB Order No. Ad-79-S, the Board stated that it:

. . . views the focus of the Phase III unit determination proceedings to be a determination of those rank and file employees who are to be included in the designated appropriate units. However, the burden is on the . . . party which may seek to exclude employees from units because of alleged managerial, supervisory or confidential status—to affirmatively justify their exclusion. This can be done by showing evidence of actual job requirements which

Only one exclusionary issue remains to be addressed in the LLNL service unit. This is the claimed supervisory status of Vehicle Dispatcher Laurel Taylor.

DISCUSSION

The term "supervisory employee" is defined in section 3580.3.⁴ The language of this section essentially parallels the definition of supervisory employee found in the State

would disqualify the subject employees from placement in representation units irrespective of which exclusionary category those employees may fit.

Thus, the Board only approves the exclusion of the classification from the unit, and not the specific basis for the exclusion.

⁴Section 3580.3 provides:

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties; provided, that with respect to the University of California and Hastings College of the Law,

Employer-Employee Relations Act (SEERA).⁵ In resolving the exclusionary issue in dispute, we find no reason to depart from the Board's conclusions regarding exclusionary issues set forth in Unit Determination for the State of California Pursuant to Chapter 1159 of the Statutes of 1977 (State Employer-Employee Relations Act) (12/31/80) PERB Decision No. 110c-S.6 Thus,

there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

Supervisory employees have limited rights under HEERA as set forth in section 3580 et seq.

⁵The SEERA is codified at section 3512 et seq.

"Supervisory employee," as defined in section 3522.1 of SEERA, does not contain the department chairperson language of HEERA. Section 3522.1 provides:

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

⁶Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/22/81) PERB Decision No. 173-H and (11/17/81) PERB Decision No. 176-H.

we conclude that the burden of proving the exclusionary claim at issue herein rests with the party asserting it.⁷

Stipulations of fact submitted by the parties are accepted as conclusive. See additionally the detailed discussion regarding the definition of supervisory employee and the functions of the laboratory in Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California Pursuant to Chapter 744 of Statutes of 1978 (Higher Education Employer-Employee Relations Act)

(3/8/83) PERB Decision No. 246a-H, at p. 8 et seq.

DISPUTED SUPERVISORY POSITION

UC contends that Laurel Taylor, a Vehicle Dispatcher (Class Code 831.4) in the LLNL service unit, is a supervisor and should therefore be excluded from the unit.

Taylor is one of two dispatchers in the Automotive Fleet Division of LLNL. The supervisor of the entire division is Robert Ynunza. Under him are the two dispatchers, six full-time drivers and four part-time drivers. Taylor has the same job classification as the other dispatcher. She receives the same wages and benefits. She does work similar to the other dispatcher part of the day and work similar to the Facility Driver II classification another part of the day. She

⁷See also In Re; The State Employer-Employee Relations Act, Phase III, Unit Determination Proceeding (10/18/79) PERB Order No. Ad-79-S.

has additional responsibilities of record keeping and other administrative functions. She testified that she spends six hours a day either dispatching or driving and two hours tending to her office duties.

The record indicates that Taylor has participated in the hiring of two employees since she became dispatcher. She reviewed applications, was present at the interviews conducted by division supervisor Ynunza, and discussed the applicants with Ynunza after the interview. Ynunza made the hiring decision.

Taylor writes performance evaluations and discusses these evaluations with the employees of the division, but they are reviewed, approved and signed by supervisor Ynunza. On at least one occasion he changed an evaluation she prepared.

Taylor has the authority to issue oral warnings. However these warnings are in the nature of corrective counseling and do not constitute disciplinary action.

Work assignment and vacation scheduling are routine functions based upon simple common sense guidelines. The record does not indicate that the distribution of overtime is done in other than a routine and clerical manner. Each driver may work 16 hours a week overtime. If Taylor needed to ask someone to work over 16 hours she would have to check with supervisor Ynunza.

In the SEERA unit determination decision, the Board declined to afford supervisory status to employees who participate in hiring interviews and make recommendations where the ultimate

decision to hire remains with their superiors.⁸ The preparation of performance evaluations was not found to be evidence of supervisory status where the disputed employee's participation is subject to substantial review and approval.⁹ The counseling function, though it involves criticism and corrective effort, does not require exclusion where it is conducted on an informal oral basis, since it does not amount to the effective recommendation of discipline.¹⁰

Taylor's remaining duties do not qualify her for exclusion as a supervisor because they are merely routine and clerical, and do not require the use of independent judgment.¹¹ Additionally, Taylor performs duties similar to those of her subordinates for the great portion of her working day.¹²

Based on the foregoing facts and discussion, it must be concluded that Taylor is not a supervisor whose obligation to the employer outweighs her entitlement to the rights afforded rank-and-file employees. Thus, employee Taylor should be included in the LLNL service unit.

⁸Unit Determination for the State of California, supra, PERB D , at p. 11.

⁹Id., at p. 14.

¹⁰Id., at p. 12.

¹¹Id., at pp. 8-9.

¹²Id., at pp. 6-8.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

(1) The classification of Protective Service Sergeant (Class Code 655.2) is excluded from the Lawrence Livermore National Laboratory (LLNL) service unit according to the stipulation of the parties and based upon the facts and reasons stated therein.

(2) Vehicle Dispatcher Laurel Taylor (Class Code 831.4) is included in the LLNL service unit for the reasons stated in the foregoing Decision.

(3) Any technical errors in this Order shall be presented to the director of representation who shall take appropriate action thereon in accordance with this Decision.

By the BOARD