

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of:)
)
Unit Determination for Employees) Case No. SF-RR-1002-H et al.
of the Regents of the University)
of California.) PERB Order No. Ad-114b-H
)
) August 4, 1982
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)

Appearances: Robert Bezemek, Attorney (Bennett & Bezemek); Stewart A. Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger); Lawrence Rosenzweig, Attorney (Levy & Goldman); Les Chisholm for American Federation of State, County & Municipal Employees, AFL-CIO; Kenneth C. Absalom for California Nurses Association; Glenn Rothner, Attorney (Reich, Adell & Crost); Andrew Thomas Sinclair, Attorney for American Federation of State, County and Municipal Employees, AFL-CIO, Local 371; Thomas E. Rankin, Attorney for Laborer's International Union, Local 1276; Franklin Silver, Attorney (Beeson, Tayer, Kovach & Silbert); Patrick J. Szymanski, Attorney (Beeson, Tayer, Kovach & Silbert); Philip Callis, Attorney for California State Employees Association; Jerrold C. Schaefer, Kent Jonas, Douglas Barton, Attorneys (Corbett, Kane, Berk & Barton); James Odle for the Regents of the University of California.

Before Gluck, Chairperson; Jaeger, Jensen, Morgenstern, and Tovar, Members.

DECISION AND ORDER

On April 20, 1982, the Public Employment Relations Board issued PERB Order No. Ad-114a-H directing the Chief Administrative Law Judge to conduct hearings regarding University of California exclusionary issues, including questions of managerial, supervisory, confidential, casual and student status. Pre-hearing conferences and hearings having been conducted in June and July, 1982, at considerable cost and without substantial resolution of the matters in dispute, the Board now ORDERS:

1. that hearings on a day-to-day basis be deferred until further pre-hearing inquiries and investigations have been undertaken by the Director of Representation to narrow the number of contested issues for additional hearing;

2. that the student exclusion stipulation dated July 7, 1982, be accepted;¹

3. that all parties and/or their representatives attend a pre-hearing conference on August 13, 1982, regarding further procedural orders in this case, including steps required to implement the necessary inquiries and investigations. Said conference will take place at University Hall, 2200 University Avenue, Berkeley, California, Room 150 (Regents' Large Conference Room), at 10:00 a.m.

PER CURIAM

¹Chairperson Gluck did not take part in the consideration of this part of the Order.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of:)
)
UNIT DETERMINATION FOR) Case No. SF-RR-1002-H et al.
EMPLOYEES OF THE REGENTS OF)
THE UNIVERSITY OF CALIFORNIA) PERB Order No. Ad-114c-H
(EXCLUSIONARY PHASE).)
) September 14, 1982

Appearances: James N. Odle, Attorney, and Judith Droz Keyes, Attorney (Corbett, Kane, Berk & Barton) for the Regents of the University of California; Glenn Rothner, Attorney (Reich, Adell & Crost) for American Federation of State, County and Municipal Employees, AFL-CIO; Philip E. Callis, Attorney (California State Employees Association).

Before: Jaeger, Member; Gluck, Chairperson, Jensen and Tovar, Members.

DECISION AND ORDER

On August 4, 1982 the Public Employment Relations Board (hereafter PERB or Board) issued PERB Order No. Ad-114b-H. By that Order the Board halted day-to-day hearings in this matter pending further inquiries and investigations under the direction of the director of representation. The Board also provided that the parties and/or their representatives attend a pre-hearing conference on August 13, 1982 regarding further procedural orders and steps to implement the necessary investigations.

Prior to that conference, on August 12, 1982, the director of representation issued the attached Pre-Hearing Notice and

Order for Investigation, Production of Documents, and Hearing. Among other things, that Order requires all parties to produce declarations and documentary evidence pursuant to an established time schedule regulating the investigation of exclusionary claims. The August 12 Order also provides a mechanism for the parties to make motions for protective orders in the event there are concerns regarding employee privacy interests or the circumstances governing the production (or inspection) of documents.

On August 23, 1982 the University filed an administrative appeal of the August 12 Order, as well as a request for a stay. The Board has concluded that the issues raised by the University should have first been raised with opposing counsel and with the director of representation before being presented to this Board since by the terms of the August 12 Order a protective order mechanism that would permit resolution of the University's overall concerns exists. For this reason, the requested stay and appeal are DENIED. However, given the nature of the University's claims, the matter is hereby referred to the Director of Representation for review and clarification, if appropriate, and shall be treated as a

request for a protective order pursuant to the terms of the
August 12 Order.¹

PER CURIAM

¹Nothing in this Order should be construed as a determination by the Board that the University's appeal involves the "mechanics of an election" and is therefore not properly appealable pursuant to PERB Regulation 32380. That issue is not before the Board at this time since the matter has been referred to the director of representation to allow for the exhaustion of administrative remedies by the Board's delegated representative.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:)	Case No. SF-RR-1002-H,
)	et al.
UNIT DETERMINATION FOR EMPLOYEES)	
OF THE REGENTS OF THE UNIVERSITY)	PRE-HEARING NOTICE AND
OF CALIFORNIA (EXCLUSIONARY)	ORDER FOR INVESTIGATION,
PHASE).)	PRODUCTION OF DOCUMENTS,
)	AND HEARING.
)	<u>August 12, 1982</u>

PLEASE TAKE NOTICE that the following ORDER, pursuant to PERB Decision No. Ad-114b-H (8/4/82), will hereafter govern the procedural course of the exclusionary phase of this proceeding.

The five steps outlined below will be used to arrive at exclusionary determinations. Timelines and deadlines for submissions covering each step are reflected on the appendix attached to this Pre-Hearing Notice and Order.

1. The University of California will submit declarations under penalty of perjury in support of each whole class and/or individual employee exclusionary claim. Declarations must be specific as to facts justifying the claim, and must be legally sufficient to constitute the University's case-in-chief for the purpose of proof and for cross-examination. Declarations about these claims shall be accompanied by relevant documents, or, alternatively, documents shall be made available for inspection. (Declarations of authenticity may accompany the documents or may be incorporated within the exclusionary claim declarations.)

Relevant documents that must be produced, where available, include the following: (a) organizational charts; (b) job descriptions; (c) evaluations of the person(s) about whom the claim is made; (d) personnel actions taken involving someone other than the person(s) about whom the claim is made (e.g., evaluations, appraisals, warnings, reprimands, corrective discipline, hiring, transfers, promotions, wage increases, and grievance determinations; (e) employment and personnel policy statements and guidelines by and/or about the person(s) for whom the claim is made, setting forth the functional relationship of said person(s) to the employer in terms of exclusionary criteria.

The University is invited to submit explanatory memoranda providing an overview of the submitted materials. Service and proof of service of the declarations, documents and related memoranda shall be made on the PERB and on employee organizations with an interest in the relevant proposed unit. If the parties are unable to agree on terms, the PERB will entertain motions for protective orders concerning employee privacy and reasonable time, place and manner guidelines for document production and/or inspection.

2. Employee organizations will review the materials submitted by the University and shall file with the PERB a list of classifications and/or positions which the organization is prepared to stipulate are excluded from the unit in

question. Service and proof of service of the list on interested parties are required. The PERB, at its discretion, may schedule settlement conferences to narrow disputed issues.

3. Employee organizations shall submit any counter-declarations and relevant documents, subject to the standards described above applicable to the University, regarding proposed exclusions not resolved by stipulation. Service and proof of service of counter-declarations and related documents on interested parties are required. A failure to file counter-declarations and supporting documents will be deemed a waiver of opposition to the claim, unless, on the date employee organization filings are required, the organization files its opposition on the ground that a prima facie case has not been stated by the University. Each claim opposed on this ground must be supported by a statement identifying alleged insufficiencies in the University's factual submission. Service and proof of service of statements of insufficiency on interested parties are required.

4. The PERB will conduct conferences to review the contested claims and to arrive at settlements.

5. The PERB will examine the unresolved claims on the basis of the totality of materials submitted by the parties to determine whether a sufficient case has been presented for transmittal to the Board itself for determination, or, whether further investigation or formal hearing is required to resolve disputed issues of fact.

Notices of further investigation and/or hearing, where necessary, will be sent to the parties, specifying the claims upon which additional evidence shall be received. Thereafter, the record pertaining to any unresolved claim shall be transmitted directly to the Board itself for determination.

Dated: August 12, 1982

JANET E. CARAWAY
Director of Representation

APPENDIX

(Case No. SF-RR-1002-H,
(et al.
(
(PRE-HEARING NOTICE AND
(ORDER FOR INVESTIGATION,
(PRODUCTION OF DOCUMENTS,
(AND HEARING.
(August 12, 1982

The process of developing the record in this proceeding will be divided into three phases as follows:

Phase I -	LLNL Proposed Units: (1) Clerical (2) Skilled Crafts (5) Professional
Phase II -	(10) Patient Care (11) Professional Health Care (12) Librarian (14) Staff Administrative
Phase III -	(6) Clerical (7) Skilled Crafts (8) Technical (9) Service (13) Non-Academic-Senate Academic and Allied

General timelines and due dates for the various required submissions will be as follows unless modified pursuant to a subsequent order:

	Phase I	Phase II	Phase III
Step 1	Due 9/27/82	Due 11/1/82	Due 12/13/82
Step 2	Due 10/11/82	Due 11/19/82	Due 1/7/83
Step 3	Due 11/5/82	Due 12/17/82	Due 2/4/83
Step 4	11/8/82-11/19/82	1/3/83-1/14/83	2/7/83-2/18/83
Step 5	11/22/82-12/17/82	1/17/83-2/4/83	2/21/83-3/11/83