

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY,

Employer,

And

ACADEMIC PROFESSIONALS OF
CALIFORNIA,

Exclusive Representative,

And

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Exclusive Representative.

REPRESENTATION
CASE NOS. LA-UM-724-H
LA-UM-725-H

PROPOSED DECISION
(11/07/05)

Appearances: Sharyn Abernatha, Labor Relations Manager, for the Trustees of the California State University; Edward R. Purcell, Business Manager, for the Academic Professionals of California; Jorge A. Salinas, Senior Labor Relations Representative, for the California State Employees Association.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In these two cases, a higher education employer and two exclusive representatives dispute the appropriate unit placement of certain library employees.

On February 24, 2004, the Trustees of the California State University (CSU) filed with the Public Employment Relations Board (PERB) a unit modification petition (LA-UM-724-H), seeking (1) the creation of a new library services specialist (LSS) classification to be placed in CSU Unit 7, (2) the elimination of library assistant (LA) I, II, III and IV classifications from Unit 7, and (3) the elimination of lead library assistant (LLA) II, III and IV classifications from Unit 4. On March 5, 2004, the Academic Professionals of California (APC), the exclusive

representative of Unit 4, sent PERB a letter opposing CSU's petition. On March 19, 2004, the California State Employees Association (CSEA), the exclusive representative of Unit 7, sent PERB a letter also opposing CSU's petition. Later, on March 30, 2004, CSEA sent PERB another letter, this time supporting CSU's petition.

Meanwhile, on March 5, 2004, APC filed with PERB its own unit modification petition (LA-UM-725-H), seeking clarification of the assignment of duties of the LLA classification. On April 1, 2004, CSU sent PERB a letter opposing CSU's petition.

PERB held a settlement conference on April 20, 2004, but the cases were not settled. PERB held a formal hearing on July 13, 2004. With the conclusion of post-hearing briefing on October 14, 2004, the cases were submitted for decision.

FINDINGS OF FACT

CSU is a higher education employer under the Higher Education Employer-Employee Relations Act (HEERA).¹ APC and CSEA are employee organizations under HEERA that have been certified as exclusive representatives. APC's Unit 4 is comprised of about 2000 academic support employees. CSEA's Unit 7 is comprised of about 6500 clerical and administrative support services employees. CSEA also represents three other CSU units, including Unit 9, which is comprised of technical and support services employees.

The LLA classifications currently in Unit 4 were first established in 1979, at which time they were called supervising library assistant (SLA) classifications. The SLA classifications were placed in Unit 4 by a PERB decision issued in 1981. (Unit Determination for the California State University (1981) PERB Decision No. 173-H.) PERB stated that the SLA classifications and other classifications determined to be in Unit 4 were "all involved in non-instructional academic support activities," providing "services which enable students to

¹HEERA is codified at Government Code section 3560 and following.

maximize their educational experience by ministering to their emotional, social, intellectual, and cultural well-being.” PERB further stated:

The work of these classes generally requires a level of expertise gained either by education or on-the-job training which is above that typically required of clerical workers.

PERB placed several professional classifications (such as educational research project consultant) and several technical classifications (such as SLA) in the same unit, partly in order to avoid “excessive fragmentation and the creation of exceedingly small units.”

With regard to the SLA classifications in particular, PERB stated:

Supervising library assistants (SLA) work under the direction of librarians performing a variety of tasks including the supervision of clerical and student employees in the libraries. In the absence of the principal cataloger, the SLA supervises the bibliographic services.

Based on these described functions, PERB found the SLA classifications were appropriately included in Unit 4.

CSU had argued that the SLA classifications should be excluded from the unit as supervisory. PERB responded:

The evidence indicates that although these employees serve as heads of various sections within the library, their supervisory functions are exercised only with respect to clerical employees and student assistants. Because they do not supervise any unit employees, the supervising library assistants are included in the unit.

At the time of PERB’s decision, CSU had not yet implemented classification standards for the SLA classifications.

The LA classifications currently in Unit 7 were first established in 1962. CSU implemented classification standards for those classifications in 1978. The LA I classification was defined as follows:

Under general supervision, Library Assistants I perform specialized and semi-technical duties which require skills in and knowledge of phases of library activities which exceed those normally expected in clerical jobs, but which do not require the full professional knowledge of library science.

In their typical activities, LA I employees were expected in part to do the following:

... supervise student assistants in typing and filing of cards, in maintaining card catalogs and shelflist records, in processing accessions, in preparing books for release, etc.; ... supervise clerical or student assistants working at the loan desks, shelving books and reading shelves; ...

The LA II classification was defined in part as follows:

This level includes positions requiring considerable specialized knowledge and skills in certain library techniques, methods and functions which have been built up through experience in clerical or sub-professional library work or study in library science at the undergraduate level. Normally this position involves responsibility for carrying through relatively independently on a complete set of library activities or procedures necessary to maintain a part of a library function or process.

Supervision of clerks and student assistants is also characteristic of some positions at this level, although the performance of difficult sub-professional work is of paramount importance.

In their typical activities, LA II employees were expected in part to be responsible for the following:

... for training and supervising students and clerks assigned to discharge work; and for assuming responsibility for the circulation department on evenings and holidays when the professional librarian in charge is not on duty.

Minimum qualifications for LA II employees included "ability to train and lead others in assigned procedures."

The LA III classification was defined as follows:

Under general direction, incumbents of positions in this class perform very difficult and complex work requiring the application of quasi-professional library skills and knowledges as well as a comprehensive knowledge of the practices and

procedures of a basic library function or unit; or may supervise lower level library assistants, clerical employees and student assistants in the performance of work in a complex organizational unit or service area of a library.

Typical LA III assignments included “supervisory” assignments such as responsibility “for all aspects of a continuation section,” for the operations of a Reserve Book Room, for the operations of a circulation desk, or for cataloguing. Minimum LA III qualifications included “ability to plan, organize and supervise the work of others.” The LA IV classification did not yet exist in 1978.

Because there were not yet any classification standards for the SLA classifications, it is not clear how those classifications were to be distinguished from the LA classifications. It does not appear that in 1981 anyone asked PERB to consider whether the LA classifications belonged in Unit 4 with the SLA classifications.

In 1982, PERB certified CSEA as the exclusive representative of Unit 7. The unit was described as including the LA classifications. There was no actual PERB decision, however, placing the LA classifications in Unit 7.

In 1991, CSU revised the LA classification standards and also implemented LLA (formerly SLA) classification standards. CSU intended these standards “to reflect changes in technology and to delineate more accurately the scope and responsibility of the positions.” The LA and LLA classifications were described as part of the same series (the “Library Assistant Series”), but there was apparently no move at that time to place all the classifications in the same unit.

The 1991 classification standards described the series in part as follows:

The Library Assistant Series includes positions that provide technical and paraprofessional support to librarians and library users at a level consistent with assigned duties and responsibilities. This series is not intended for the use of

positions that are performing assignments predominately clerical in nature.

In order to qualify for lead designation, employees classified as library assistant II, III, or IV must be responsible for directing the work of a group of employees who are classified at the same level or below their own level, not including students assistants. Library assistants I, while they may schedule and train student assistants, do not meet lead position criteria.

LLA positions were defined in part as follows:

Incumbents classified at or above the level of library assistant II may be appointed to lead responsibilities in addition to their regular assignments. When performing lead responsibilities, incumbents shall act as the liaison between a librarian or HEERA designated supervisor or manager and a small group of full-time employees or their full-time equivalent, not including student assistants; lead and motivate the group of employees under their direction; solve work problems, adjust priorities, and make necessary changes in duties and methods; anticipate potential problems and needs of employees; communicate major issues to the supervisor or manager for resolution; and assist the supervisor or manager in personnel-related issues.

These responsibilities were in addition to the "responsibilities, knowledge, abilities, education, and experience" listed for the LA positions.

It appears that these 1991 classification standards have not proved entirely satisfactory. CSU has now drafted a new classification standard, combining the LA and LLA classifications into a new LSS (library services specialist) classification with four skill levels. According to the draft, the LSS classification is designed for "technical and paraprofessional library positions" that provide "essential direct and indirect support to library users" including students. The draft gives the following overview of the four skill levels:

Position Skill Level I – Incumbents at this level perform clearly defined tasks, typically within one or two core functions. Incumbents may oversee student workers performing similar or related work within the library unit.

Position Skill Level II – Incumbents at this level work independently to perform more complex technical tasks in a

specified functional area within a library unit and may provide functional oversight for assigned area. Incumbents also may be responsible for coordinating work of student workers assigned to the area and may participate in hiring, training, evaluating and payroll processing of student workers.

Position Skill Level III – Incumbents at this level perform more complex and/or specialized technical and paraprofessional library duties to support daily operations and/or programs. Incumbents often are responsible for overseeing daily operations of a library unit(s), including providing lead work direction to other library and clerical staff, as well as student workers, and may assist in supporting the unit's budgetary and/or other administrative activities.

Position Skill Level IV – Incumbents at this level perform the most complex paraprofessional and/or specialized library functions to support library operations and programs. Incumbents often are responsible for overseeing daily operations of (a) large or significant library unit(s), which may include directly or indirectly providing lead work direction to other library and clerical staff, as well as student workers, assigned to the unit(s). Incumbents often are involved in supporting the unit's budgetary and/or other administrative functions.

The draft lists a dozen “core functions” or “key functional areas,” including circulation, reserves, and cataloguing and bibliographic control.

Gina Caywood (Caywood), CSU's senior manager of compensation and information projects, testified that the draft was the result of a classification study she managed. According to Caywood, the study showed that lead duties were actually being performed at LA levels as well as LLA levels. Caywood described the situation in part as follows:

Where it seemed that lead work was inherent, and the work of the library assistant became more of a stronger para-professional, took a greater role in the library, had a greater responsibility, had greater impact, that doing lead work became just a natural part of that job.

According to Caywood, the study also showed that as LA employees took a stronger role there was a less need for them to be supervised on a daily basis.

The associate dean of the library at CSU's Long Beach campus testified that he had seen LA work evolve from work that was more clerical to work that was more technical and professional, and that he had also seen more of a team environment and less "leading." The dean of the library at CSU's Pomona campus similarly testified that he had seen LA work evolve from work that was more clerical to work that involved more expertise and judgment, and that he had also seen less stratification and less time involved with lead responsibilities. Two LLA employees from CSU's Sacramento campus, however, testified that they actually did spend at least 50 percent of their time on "supervision and management," as was stated in their official position descriptions. There is no evidence that their duties are expected to change.

Caywood testified that combining the LA and LLA classifications into one LSS classification with four skill levels would provide "more flexibility in terms of designing work [and] in terms of giving employees promotional opportunities." She further testified that to split the LSS classification between bargaining units "defeats the whole purpose" of the draft classification standard.

As noted above, LA and LLA employees are already part of the same "Library Assistant Series." They work in the same locations, at the same hours, under the same supervisors, and under the same rules and policies. Being in different units, they currently have different salary ranges and benefits, but, as CSU acknowledges in its post-hearing brief, such matters will be subject to negotiation once a unit determination has been made.

ISSUE

Should the LSS classification be placed in Unit 4 or Unit 7?

CONCLUSIONS OF LAW

As noted above, CSU's unit modification petition (LA-UM-724-H) seeks (1) the creation of a new library services specialist (LSS) classification to be placed in CSU Unit 7, (2) the elimination of library assistant (LA) I, II, III and IV classifications from Unit 7, and (3) the elimination of lead library assistant (LLA) II, III and IV classifications from Unit 4. CSEA supports CSU's petition. In its post-hearing brief, APC does not oppose the replacement of the LA and LLA classifications with the LSS classification but argues that the LSS classification should be placed in Unit 4.²

HEERA section 3579 states in relevant part:

(a) In each case where the appropriateness of a unit is an issue, 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 with the employer, the extent to which the employees belong to the same employee organization, 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 factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, 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.

² APC argues in the alternative that the LSS classification should be split between Unit 4 and Unit 7, but Caywood testified that such a split "defeats the whole purpose" of the draft LSS classification standard.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and 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 employee groups or any proliferation of units among the employees of the employer.

PERB applied this language in 1981 when it placed the SLA classifications in Unit 4. (Unit Determination for the California State University (1981) PERB Decision No. 173-H.) In placing the SLA classifications in Unit 4, PERB determined that their library work was “technical,” involved “non-instructional academic support,” and generally required “a level of expertise . . . above that typically required of clerical workers.” The first question in this case is whether PERB’s original determination regarding SLA employees is applicable to the new LSS employees.

CSU argues in part that there is now less need for “lead” library work. The evidence indicates that, at least on some campuses, “lead” work is less prominent and more dispersed than formerly. “Lead” work is not, however, something that PERB particularly attributed to SLA employees. PERB found that SLA employees’ “supervisory functions are exercised only with respect to clerical employees and student assistants.” Similarly, under the draft classification standard, LSS employees at Skill Level III and above may at least “oversee” student workers at all skill levels, and may provide “direction” to clerical staff.

PERB also found that SLA employees served “as heads of various sections within the library.” Similarly, under the draft classification standard, LSS employees at Skill Level II and above may at least “provide functional oversight for [an] assigned area.” Furthermore, LSS

employees at Skill Level III and above “often are responsible for overseeing daily operations of a library unit(s).”

Even if “lead” work had been characteristic of SLA employees, the draft classification standard makes clear that such work is not expected to disappear. On the contrary, LSS responsibilities at Skill Level III and above explicitly include “providing lead work direction to other library . . . staff.” As previously noted, the evidence shows that such “lead” work is already widely dispersed in some campus libraries.

In placing the SLA classifications in Unit 4, PERB did not find that SLA employees spent any particular portion of their time on “lead” work. On the contrary, PERB merely found that the “supervision of clerical and student employees” was included in a “variety of tasks” that SLA employees performed under the direction of librarians.

It is thus clear from the draft classification standard and other evidence that LSS employees will now be doing the work that was formerly done by the SLA employees PERB placed in Unit 4. PERB’s placement is presumptively valid, and the burden is now on CSU to show that the proposed placement in Unit 7 is more appropriate. (State of California (Department of Personnel Administration) (1990) PERB Decision No. 794-S.)

There is plenty of evidence in this case of a community of interest among LA and LLA employees and thus (presumably) among LSS employees. They work in the same locations, at the same hours, under the same supervisors, and under the same rules and policies. They currently have different salary ranges and benefits, but, as CSU acknowledges, such matters will be subject to negotiation once a unit determination has been made.

What is lacking in this case is evidence that LA and LLA employees (and thus LSS employees) have a community of interest with Unit 7 employees. CSU and CSEA do, however, make several arguments on this point.

Both CSU and CSEA correctly point out that CSEA's Unit 7 contains administrative as well as clerical employees. This point would have more significance if LSS employees were characterized as administrative, but they are not; the draft classification standard characterizes them instead as "technical and paraprofessional." It is true that at Skill Level III and above LSS employees "may assist in supporting the [library] unit's budgetary and/or other administrative activities," but this is in addition to their primary technical and paraprofessional duties. This is hardly enough to show a significant community of interest with the administrative employees in Unit 7.

CSU also correctly points out that library work has become more technical and that CSEA's Unit 9 contains technical employees. This point might have more significance if CSU was proposing to place LSS employees in Unit 9, but CSU is not doing that. Furthermore, the SLA classification was one of several technical classifications that PERB placed in Unit 4 in 1981. There is no apparent reason to believe that LSS employees would have a stronger community of interest with technical employees outside Unit 4 than with those within Unit 4.

The best argument CSU can make is that placing the LSS classification in Unit 7 would "impact a minimal number of employees" because, as of October 2003, there were only 23 LLA employees in Unit 4 and 502 LA employees in Unit 7. This argument might be compelling if PERB had determined that the 502 LA employees belonged in Unit 7, but PERB never did so; PERB only determined that the LLA employees belonged in Unit 4. CSU's argument might be persuasive if it appeared that the LA employees had been properly placed in Unit 7, despite the lack of a PERB determination. The evidence, however, does not give that appearance. On the contrary, it appears from the 1978 classification standards that even then LA employees were performing work that PERB later found to be appropriate to Unit 4: technical, non-clerical library support work that included supervision of students and clerical

employees, and sometimes included functional responsibility for an entire section of a library. Indeed, the 1991 classification standards could be seen as an ultimately unsuccessful attempt to distinguish LA work from the LLA work that PERB had placed in Unit 4.

On the whole, I find it more appropriate to leave 23 employees in a unit that PERB determined to be appropriate for them than to leave 502 employees in a unit that may never have been appropriate for them. I therefore conclude that the LSS classification belongs in Unit 4, and that CSU's petition must be denied to the extent that it would place the LSS classification in Unit 7.

As previously noted, APC filed its own unit modification petition (LA-UM-725-H), seeking clarification of the assignment of duties of the LLA classification. In its post-hearing brief, however, APC does not argue in favor of this petition, which I conclude APC has abandoned. Furthermore, the new LSS classification and its placement in Unit 4 may help to bring about some of the clarity APC sought. In any case, APC's petition must be dismissed.

PROPOSED ORDER

Based upon the forgoing findings of fact and conclusions of law and the entire record in this matter, those portions of CSU's petition in Case No. LA-UM-724-H that seek the elimination of library assistant (LA) I, II, III and IV classifications from CSU Unit 7, the elimination of lead library assistant (LLA) II, III and IV classifications from Unit 4, and the creation of a new library services specialist (LSS) classification to replace them are hereby GRANTED. Because the LSS classification is found to belong in Unit 4, the portion of CSU's petition that seeks to place the LSS classification in Unit 7 is hereby DENIED. APC's petition in Case No. LA-UM-725-H is also hereby DENIED.

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

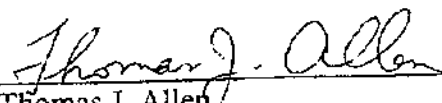
Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
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, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(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, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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, secs. 32300, 32305, 32140, and 32135(c).)



Thomas J. Allen
Administrative Law Judge