VACATED by Los Angeles Community College District
(1980) PERB Decision No. 123a

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES COMMUNITY COLLEGE DISTRICT, Employer, and CLASSIFIED UNION OF SUPERVISORY EMPLOYEES, LOCAL 699, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Employee Organization.	)	Case No. LA-R-809 PERB Decision No. 123 **March 25, 1980**

Appearances: Larry J. Frierson, General Counsel for Los Angeles Community College District; Leo Geffner (Geffner & Satzman) for Classified Union of Supervisory Employees, Local 699, Service Employees International Union, AFL-CIO.

Before: Gluck, Chairperson*; Moore and Gonzales, Members.

DECISION

This case presents essentially the same issue as that resolved by the Public Employment Relations Board (hereafter

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*Upon submission of this case to the Chairman Gluck sent the following letter to the parties:

> Please be advised that while I perceive no legal reason which would prevent my deliberating in the referenced cases, I have, nevertheless, chosen not to participate.
>
> Should my colleagues on the Board not agree on the outcome of these cases, I may at that time participate for the purpose of making it possible for the Board to issue an effective decision.

Because Members Moore and Gonzales reached opposite conclusions in this case, Chairman Gluck participated in its disposition in order to permit issuance of an effective final order.

PERB or Board) in Sacramento City Unified School District (3/25/80) PERB Decision No. 122: whether two locals of the Service Employees International Union (hereafter the International) are "the same employee organization" within the meaning of section 3545(b)(2) of the Educational Employment Relations Act (hereafter EERA).[1]

The attached PERB hearing officer's proposed decision held that the Classified Union of Supervisory Employees, Local 699, SEIU, AFL-CIO (hereafter Local 699) is not the same employee organization as Service Employees International Union, Local 99 (hereafter Local 99) and is not for that reason barred from representing classified supervisory employees in the Los Angeles Community College District (hereafter District) in which Local 99 now represents rank and file classified employees. The District has excepted from the proposed decision, urging that the International "so supports, influences and dominates its subsidiary locals as to require a finding that the 'same organization' seeks to represent

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[1]The EERA is codified at Government Code section 3540 et seq. Section 3545(b)(2) provides:

> A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

All section references herein are to the Government Code unless otherwise noted.

supervisors and those supervised by them." For the reasons that follow, the Board itself affirms the hearing officer's determination that Local 699 and Local 99 are not the same employee organization.

FACTS

The hearing officer's statement of the procedural background and facts in this case is free from prejudicial error and is adopted by the Board itself.

DISCUSSION

In Sacramento City Unified School District, supra, PERB Decision No. 122, we held that the Legislature intended section 3545(b)(2) to preclude the same employee organization from representing even separate units of supervisors and their subordinates in order to avoid the risk that employers face when their supervisory personnel have dual and possibly conflicting organizational interests and work responsibilities. In that case we also held that two locals of the same International are not necessarily "the same employee organization" merely because of that affiliation.

Although the District did not argue that there was sufficient interchange between the two locals themselves to make them "the same employee organization," the hearing officer nonetheless addressed this issue and concluded they were not. Without adopting the specific discussion of the hearing officer, the Board also finds that there are not such

connections between these two local as to make them "the same employee organization."

As in Sacramento City, supra, the District here argues that because the International exerts an impermissible degree of control over its locals, the locals are indistinguishable from their parent organization. The same constitutional relationship exists between the International and the locals involved in this case and the International and the locals involved in Sacramento City, supra. For the reasons discussed in our decision in that case, we disagree that the powers that the International has over its locals are sufficient to disqualify Local 699 from representing supervisors in the same district in which Local 99 represents their subordinates. As long as the International exercises its powers over its locals in a manner consistent with the purpose of section 3545(b)(2), and Locals 699 and 99 in fact remain independent and autonomous, no statutory purpose is served by forbidding Local 699 from representing the District's supervisory employees.

Unlike Sacramento City, supra, the instant case presents an additional basis for arguing that Local 699 is the same as the International. Here Local 699 has been assisted in its formation and organizing by the International and has received office space, equipment, clerical help and supplies from Joint Council 8. For example, an International officer (Mr. Zuniga) who is not a member of Local 699 is an officer of Local 699; that individual, who is paid by the International, has handled

grievances for rank and file employees in Local 99; signed the request for recognition of the supervisory unit; helped draft Local 699's constitution and bylaws; and received his pay at the office of Joint Council 8, a subsidiary of the International, which rents office space from Local 99. In addition, Joint Council 8 supplies office space, equipment, supplies and staff to Local 699 free of charge. The person who supervises the Local 699 chief organizer is the chief organizer for Local 99. This help from the International continued for a period of at least eight months.

The District argues that in deciding whether Local 699 and Local 99 are "the same employee organization" we should look to cases interpreting section 9(b)(3) of the National Labor Relations Act (29 U.S.C. sec. 150 et seq., hereafter NLRA). That section restricts the National Labor Relations Board (hereafter NLRB) from combining guards and nonguards in the same unit, and further provides:

> [N]o labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. [29 U.S.C. sec. 159(b)(3), emphasis added.]

The NLRB has held that Congress intended Section 9(b)(3):

> . . . to insure to an employer that during strikes or labor unrest among his other employees, he would have a core of plant protection of his property and persons

> thereon without being confronted with a division of loyalty between the employer and dissatisfied fellow union members. [McDonnell Aircraft Corporation (1954) 109 NLRB 967, 969, [Citing 93 Congressional Record 6444; see also Armored Motor Service Co., Inc., (1953) 106 NLRB 1139, 1140.][2]

In International Harvester Company (1949) 81 NLRB 374, the NLRB found no disqualifying affiliation when during the formative stages of a new guard union (severed from an existing mixed unit in response to the amendment of the NLRA to add section 9(b)(3)): the non-guard bargaining committee chairman acted as spokesperson for the guard union, the guard union election was conducted on borrowed ballots bearing the non-guard union's name, the guards met rent-free in the non-guard's hall, and (at the insistence of the employer) the non-guard union continued to receive dues deductions from the guards which were paid over to the guard union. After stating that "[t]he mere use of a union hall does not, as the dissent suggests, establish 'affiliation,'" the NLRB said:

> Although the record discloses that a certain amount of comity, mutual sympathy, and

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[2]Accepting this analysis, the federal courts have additionally noted that section 9(b)(3) does not prevent guards from joining, or employers from voluntarily recognizing, mixed unions; it simply restricts the NLRB from certifying them. (See, e.g., Teamsters, Local 344 v. NLRB (Purolator Security, Inc.) (7th Cir. 1977) 97 LRRM 2111, 2114-2115, 2116; NLRB v. Bel-Air Mart Inc. (4th Cir. 1974) 86 LRRM 2378, 2381-2382; NLRB v. White Superior Div. (6th Cir. 1968) 69 LRRM 2903, 2904-2905; Teamsters, Local 71 v. NLRB (D.C. Cir. 1977) 94 LRRM 3167, 3169.)

> common purpose exist between the Petitioner and Local 402, UAW-CIO, there is no showing that the Petitioner is not now entirely free to and does not formulate its own policies and decide its own course of action. [Id. at 376, emphasis added.]

Similarly, in Federal Services, Inc. (1956) 115 NLRB 1729, the NLRB found that temporary assistance by a non-guard union while guards organize is not "affiliation."[3]

The NLRB considers it relevant that the allegedly "affiliated" unions have overlapping officers. For example, in Willcox Construction Co., Inc. (1949) 87 NLRB 371, 373-374 the Board found that:

> . . . the continuous holding of principal offices in the I.W.A. [five individuals held offices in both organizations], and participation in the formulation of I.W.A. policies, by regular officers of the I.L.A. and its affiliate, . . . constitutes an indirect affiliation . . . of the sort which Congress intended to proscribe by enacting Section 9(b)(3) in 1947.

Substantial financial aid from a non-guard union has also been found to constitute impermissible affiliation (International Harvester Co. (1964) 55 LRRM 1227), as has "continuous dependence" upon another organization "for material aid as well as for advice and guidance." (The Magnavox Company (1952) 97 LRRM 1111, 1113.

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[3]The NLRB has, however, dismissed a section 8(a)(5) refusal to bargain charge when it appeared that assistance during the organizing campaign had continued even after the guard union was certified. (Mack Manufacturing Corporation (1953) 107 NLRB 209, 211.)

But organizing advice is acceptable. (E.g., Inspiration Consolidated Copper Company (1963) 142 NLRB 53, 54; The Midvale Company (1955) 114 NLRB 372, 374; Bonded Armored Carrier (1972) 195 NLRB 346.)

The hearing officer analyzed Joint Council 8's assistance to Local 699 and concluded that that relationship did not create an impermissible connection between Local 699 and the International. We do not need to affirm or reverse this conclusion, since even assuming, without deciding, that in this case the International has provided Local 699 with so much help for so long as to functionally merge the two into "the same employee organization," Local 699 is not barred from representing the District's supervisory employees because there is no evidence that Local 99 is similarly controlled by the International. Rather, the only continuing links the record shows between Local 99 and the International are those in the organizations' constitutions. We have already held that this connection is insufficient for this Board to conclude that Local 99 and the International are "the same employee organization." While the record did show that a Local 699 officer has handled grievances for Local 99 in the past, that individual testified that:

> [I]t's my expectation that once certification comes about and we can get Local 699 off the ground I will divorce myself from Local 99 and work solely for 699.

But organizing advice is acceptable. (E.g., Inspiration Consolidated Copper Company (1963) 142 NLRB 53, 54; The Midvale Company (1955) 114 NLRB 372, 374; Bonded Armored Carrier (1972) 195 NLRB 346.)

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> [I]t's my expectation that once certification comes about and we can get Local 699 off the ground I will divorce myself from Local 99 and work solely for 699.

No evidence was presented to show that this individual did not mean what he said. While we do not find that this limited relationship between the two locals is fatal, we do hold that it must be terminated as a condition of holding a representation election. Accordingly, we conclude that Local 699 and Local 99 are not the same employee organization with the meaning of section 3545(b)(2).

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this matter, it is hereby ORDERED that Classified Union of Supervisory Employees, Local 699, SEIU, AFL-CIO is NOT the same employee organization as Los Angeles City and County School Employees' Union, Local 99, or Service Employees Joint Council No. 8 of Southern California, or Service Employees International Union, AFL-CIO, CLC., within the meaning of Government Code section 3545(b)(2).

The appropriate unit for an election consists of:

> All supervisory classified employees of the employer excluding management and confidential employees and excluding all non-supervisory classifications.[4]

Within fifteen (15) workdays after service of this decision, the employee organization shall demonstrate to the regional director at least 30 percent support in the above

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[4]SEIU Local 699's request for recognition lists the classifications sought in its proposed unit. The record does not reflect that this includes all supervisory classified

unit. Before an election shall be conducted, the employee organization shall also demonstrate to the regional director that Mr. Zuniga no longer handles grievances for Local 99. The regional director shall conduct an election if the employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

By: Barbara D. Moore, Member

Harry Gluck, Chairperson, concurring:

I concur in the findings and conclusions in this case, and for the additional reasons set forth in my concurring opinion in a companion case decided today, Sacramento City Unified School District (3/25/80) PERB Decision No. 122.

Harry Gluck, Chairperson

Member Gonzales' dissent begins on page 11.

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employees of the employer. Only a unit which includes all supervisory classified employees of the employer is appropriate (Sec. 3545(b)(2)).

Jurisdiction is retained to determine any questions relating to whether the unit includes all supervisory employees and/or excludes all management or confidential classifications, if the parties are unable to resolve these issues between themselves.

Raymond J. Gonzales, Member, dissenting:

I dissent from the majority's finding that SEIU, Local 699, is not the same employee organization as SEIU, Local 99, within the meaning of Government Code section 3545(b)(2), for the reasons set forth in my dissenting opinion in Sacramento City Unified School District (3/25/80) PERB Decision No. 122.

Raymond J. Gonzales, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

LOS ANGELES COMMUNITY COLLEGE DISTRICT, Employer, and CLASSIFIED UNION OF SUPERVISORY EMPLOYEES, LOCAL 699, SEIU, AFL-CIO, Employee Organization.	Representation Case No. LA-R-809 PROPOSED DECISION 6/23/78

Appearances: Larry Frierson, General Counsel, for the Los Angeles Community College District; Robert Anderson for the Classified Union of Supervisory Employees, Local 699, SEIU, AFL-CIO.

Before Sharrel J. Wyatt, Hearing Officer.

PROCEDURAL BACKGROUND

On September 7, 1977, the Classified Union of Supervisory Employees, Local 699, SEIU, AFL-CIO, (hereafter SEIU Local 699) requested recognition from the Los Angeles Community College District (hereafter District) for a unit of approximately 136 classified supervisory employees. On October 13, 1977, the District filed its response in accordance with California Administrative Code, title 8, section 33190, in which, among other things, the District took the position that this supervisory unit is not appropriate because representation is sought by SEIU Local 699 while SEIU Local 99 represents the non-supervisory classified employees who are supervised by the employees

in the unit sought in violation of the prohibitions contained in Government Code section 3545(b)(2) which states:

> A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the District and shall not be represented by the same employee organization as employees whom the supervisory employees supervise. [Emphasis added.]

Following investigation by the Los Angeles Regional Director of the Public Employment Relations Board (hereafter PERB), findings of fact were issued on January 25, 1978, with the recommendation that a hearing be conducted. A hearing was conducted by a hearing officer of the PERB on March 28, 1978 at which five depositions were admitted in evidence as part of the record. SEIU Local 699 waived the filing of a brief and the District's brief was filed on April 21, 1978.

ISSUE

Whether SEIU Local 699 and SEIU Local 99 are the same employee organization within the meaning of section 3545(b)(2).

FINDINGS OF FACT

The District [1] recognized SEIU Local 99 as the exclusive representative of its non-supervisory classified employees on May 24, 1977. Some supervisory employees of the District have continued to maintain membership[2] in SEIU Local 99, but SEIU Local 99 has not attempted to represent them in their employment relations with the District.

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1 The District has an enrollment of approximately 134,000 attending class at nine sites 1977 California Public School Directory at 202, Cal. State Dept. of Education.

2 Continuity of membership in a local union is required to maintain death benefits allocated from the per capita tax paid by the local union to the International discussed hereafter.

The Service Employees International Union (hereafter, the International) is an organization which is run by officers who are elected every four years at a convention of delegates from local unions. One delegate for every one thousand members has voting privileges. Therefore, SEIU Local 99 has had ten delegates to the convention according to testimony. The International constitution indicates one delegate for every five hundred members. A past secretary/treasurer of Local 99 was elected as one of 35 members of the International's Executive Board and served the two offices simultaneously. Currently, no SEIU Local 99 officer holds an office with the International.

The International receives its income from a per capita tax[3] of $1.80. The per capita tax is distributed or earmarked as follows:

.21	to the members' death gratuity fund - paid on a sliding scale based on length of membership
.20	to the strike fund, earmarked for the local union
.16	per capita tax to AFL-CIO
.10	building fund for the Washington, D.C. headquarters
.05	to the Committee on Political Education (COPE) - can be rebated to the local union for use in political campaigns where it is permissible to use union funds.
.03	to various joint councils, State Councils and the Western Conference to assist them in serving local union
1.02	to the International for its administration - of which approximately .30 is used in assisting local unions in organizing

[3] A per capita tax is an amount per member per month paid from dues received by the local union to the International.

Additional per capita taxes paid from local union dues in southern California are:

.20	to the Service Employees Joint Council 8 of Southern California for research and negotiation services.
.06	to the State Council, SEIU
.02	to the Western Conference, SEIU

All local unions chartered by the International from Santa Barbara to San Diego pay a per capita tax to Service Employees Joint Council 8 of Southern California (hereafter Joint Council 8). Joint Council 8 coordinates political activities of local unions of SEIU in its geographical area.

SEIU Local 699 was chartered by the International and has jurisdiction to include members who are classified supervisory employees of public school employers in Los Angeles County. It was founded after Eugene Barnes, a classified supervisory employee of the Compton Unified School District, approached Fred Smith, a representative of SEIU Local 99 and inquired about representation for classified supervisory employees. The first meeting of SEIU Local 699 was held at San Pedro in January or February of 1977. Smith was present at that meeting. Classified supervisory employees of public school employers who have made application for membership or signed authorizations are "members" although they pay no dues at this time. SEIU Local 699 has no dues paying members and apparently no treasury. Other than one International organizer who is assigned as the chief organizer for the local, these are the persons who have been the voting participants in establishing the local.

In March or April of 1977, SEIU Local 699 drew up a constitution and by-laws which they modeled after those of the International. These documents were prepared by a committee which included Barnes, Baker[1] and International Organizers Anderson and Zuniga.

Thomas Zuniga and Robert Anderson are organizers for SEIU International. They are paid from the International's organizing fund and receive their checks at Joint Council 8. Anderson is not a member or officer and does not vote on matters related to SEIU Local 699. Zuniga is assigned as the chief organizer for supervisory employees and was elected secretary/treasurer of SEIU Local 699. He is the only person who votes on its business who is not a classified supervisory employee of a public school employer.

On behalf of SEIU Local 699, Zuniga was involved in preparing the request for representation, in explaining its structure and in preparing its by-laws. Once SEIU Local 699 is certified as an exclusive representative, Zuniga will divorce himself from SEIU Local 99 and devote his efforts to SEIU Local 699 only. Meanwhile, he has performed services for SEIU Locals 99, 699 and 434. On behalf of SEIU Local 99, he has spoken to employees of the District, Los Angeles Unified School District, Torrance School District and Compton School District, explained elections, negotiations and the effect on employees individually and collectively, and has helped to organize committees on each campus to explain the process to employees on each campus. At the District, he has represented individuals in grievances and distributed leaflets and spoken to employees to explain

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[4] George Baker, a temporary trustee of SEIU Local 699 and a senior head custodian at East Los Angeles College, has participated in SEIU Local 699 since its conception. He learned about it and was invited to participate by a business representative of SEIU Local 99.

what has transpired since SEIU Local 99 was certified by PERB; he has not been involved in negotiations or in putting together proposals to be presented to the District, but has sat in on meet and negotiate sessions between SEIU Local 99 and the District as part of his training.

Anderson has helped SEIU Local 99 in its organizing campaign at the Los Angeles Unified School District and has helped it in hearings. In August or September of 1977 the persons present at a membership meeting voted for provisional officers for SEIU Local 699. The persons with voting privileges are those employed as supervisory employees of a public school employer and the International organizer who is the interim secretary/treasurer of SEIU Local 699, Zuniga.

In August of 1977, dues of $10 per month were established by the executive board and subsequently affirmed by a vote of the membership. No dues have been collected and it is not contemplated that dues will be collected until recognition or certification is received by SEIU Local 699 as an exclusive representative. SEIU Local 699 has no income. When dues are collected, the per capita taxes previously set forth will be paid from the dues collected irrespective of the amount of dues approved by the local union.

SEIU Local 699 uses office space, office equipment and supplies of Joint Council 8 without charge. Joint Council 8 rents space in a building located at 2724 W. 8th Street, Los Angeles, California. The building is owned by SEIU Local 99. SEIU Local 99 rents space to entities other than Joint Council 8. Joint Council 8 pays SEIU Local 99 $350 per month as rent for approximately 500 square feet of space. Nothing in the record indicates that the rental arrangement is anything

other than an arm's length business arrangement. Therefore, it is found that SEIU Local 99 does not contribute support to SEIU Local 699 because SEIU Local 699 is being permitted to use space by Joint Council 8. Since April of 1977, SEIU Local 699 has held monthly membership meetings at 2724 W. 8th, Los Angeles. SEIU Local 99 has not participated in the organizing campaign of classified supervisory employees of the District on behalf of SEIU Local 699. One senior business representative of SEIU Local 99 whose deposition was taken as part of the record herein was not even aware that SEIU Local 699 was using space in the offices of Joint Council 8 in their building.

The handling of grievances on behalf of members of SEIU Local 699 would be done by the local union, not the International. Eugene Barnes, interim president of SEIU Local 699, has been involved in a grievance where two custodians charged him with harassing them. The custodians were represented by SEIU Local 99. Barnes has never been a member of SEIU Local 99.

George Baker, an interim trustee of SEIU Local 699, still pays dues to SEIU Local 99 to maintain his membership seniority for the death gratuity. He has been involved in two grievances. One grievant was represented by SEIU Local 99, the other by California School Employees Association. In each case, Baker participated at the hearing on behalf of the District. Each involved an employee who was fired. Each termination was upheld.

The District cites portions of the International constitution and SEIU Local 699's constitution and by-laws in support of its position, including:

Article IV - Section 3. - SEIU Local 699's Constitution and By-Laws:

Section 3. Every member, by virtue of his or her membership in this Local Union, is obligated to adhere to and follow the terms of the International Constitution, and the working rules promulgated in accordance with this Constitution, with respect to his or her rights, duties, privileges and immunities conferred by them and by statute. Each member shall faithfully carry out such duties and obligations and shall not interfere with the rights of fellow members.

From the International's Constitution:

Article XI
Strikes and Lockouts

Unless authority to the contrary has been granted by the General President, no Local Union shall call a strike without previous notification of the General President, who shall have the right to veto any strike to be called by a Local Union. If the General President has vetoed any such strike, the Local Union may not call the strike thus vetoed.

Article XIV
Duties of Local Unions

Section 3. The constitution and bylaws of all Local Unions and amendments thereto must be submitted to the International Union and be approved before they become valid: provided, however, that notwithstanding such approval, the constitution and bylaws of all Local Unions shall at all times be subordinate to the constitution and bylaws of the International Union as it may be amended from time to time. If a Local Union shall not have secured the approval of a valid constitution and bylaws, the provisions contained in the constitution and bylaws of the International Union as it may be amended from time to time shall govern said Local Union insofar as applicable. Regardless of approval, if any conflict should arise between the constitution and bylaws of a Local Union, or any amendments thereto, and the constitution and bylaws of the International Union as it may be amended from time to time, the provisions of the constitution and bylaws of the International Union shall control.

Article XV
Members' Interests,
Transfers

Section 1. No member of this International Union shall injure the interests of another member by undermining him in wages or financial status or by any other act, direct or indirect, which would wrongfully jeopardize a member's office or standing.

Article XX
Local Enforcement of
International Constitution

> Any Local Union wilfully neglecting to enforce the provisions of this constitution and bylaws shall be subject to suspension or revocation of its charter.

Relative to strikes, Zuniga testified that after the International approves a strike and the members vote on it, they hope other members would honor it. If SEIU Local 99 were on strike, members of SEIU Local 699 could cross the line, but it would not be encouraged because of repercussions from fellow employees and because it would violate Article XV, Section 1 (Supra) of the International Constitution.

The by-laws of SEIU Local 699 provide that the objectives are to safeguard and develop the economic welfare of supervisory employees working for public school employers (Article II, section 1.) Membership is open to any classified employee designated as supervisory by a public school employer as defined as supervisory by the EERA (Article IV, section 1) within Los Angeles County (Article III, section 1.).

The officers of the local union are a president, vice-president, secretary/treasurer, recording secretary and three trustees (Article V, section 1.) To be eligible to run for office, a candidate must have been a member for a two year period immediately preceding nomination or for 1/2 the period subsequent to the date of chartering of SEIU Local 699 (Article IV, section 4.).

The by-laws set forth the specific duties of each officer and provide that the Executive Board shall manage and direct the affairs of SEIU Local 699 between membership meetings. (Article VI, section 6.).

The by-laws provide for a negotiating committee composed of SEIU Local 699 staff and not less than three elected members from the school district division affected by the negotiations (Article VII, section 1.) and for ratification of negotiations by affected members (Article VIII, section 2.).[5]

The International constitution does provide for dissolution, secession and disaffiliation of a local union.[6]

CONCLUSIONS OF LAW

Clearly, the California Legislature was well aware of the provisions of the Labor Management Relations Act, as amended (hereafter LMRA) in framing the Educational Employment Relations Act (hereafter EERA). The LMRA specifically excludes supervisory employees from

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[5] The objectives of SEIU Local 699 are to "safeguard and develop through united and collective action the economic welfare of supervisory employees working for public school employers by improving working conditions and promoting and maintaining fair and adequate salaries and benefits ..." (By-laws, Art II, sec. 1) and to "develop collective bargaining agreements with employers within [its] jurisdiction that provide the maximum in benefits and job improvements for the employees affected and that maintain the highest possible standards of union security (Art II, sec.2.). Therefore, it is found that SEIU Local 699 is an employee organization within the meaning of section 3540.1(d)

[6] Article XXIII-Disolution states:

> This International Union cannot dissolve while there are seven dissenting Locals. No Local Union can dissolve, secede or disaffiliate while there are seven dissenting members; no Joint Council can dissolve, secede or disaffiliate while there are two dissenting Local Unions. The International Union shall be notified by registered or certified mail of any meeting scheduled by a Local Union or Joint Council for the purpose of taking a vote on disaffiliating from the International Union at least fifteen (15) days prior to the date of such scheduled meeting and a representative of the International Union shall be afforded an opportunity to speak at such meeting. In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of such Local Union or Joint Council shall become the property of the International Union. Under no circumstances shall any Local Union or Joint Council distribute its funds, assets or properties individually among its membership.

coverage.[7] The California Legislature determined that supervisory employees of a public school employer in California would not be excluded from coverage under the EERA.

The LMRA, while not excluding guards from coverage, provides special treatment because of the special relationship security personnel bear in relation to protecting the property of the employer. Thus, section 9(b)(3) of the LMRA provides:

> ... but no labor organization shall be certified as the representative of the employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

If the California Legislature had intended to prohibit representation of supervisory employees by an employee organization which is affiliated directly or indirectly with an employee organization which admits to membership employees other than supervisors, they were aware of the language of the LMRA and could easily have framed language which

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[7] LMRA section 2. (3) states:

> (3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicity states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined. [Emphasis added]

accomplished that end and by reference, made a whole body of case law on the subject applicable.

The California Legislature did not enact identical or analogous language. Rather, the language adopted in section 3545(b)(2) states:

> A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

Thus representation is not prohibited by an employee organization that is affiliated directly or indirectly with an employee organization that admits non-supervisory employees to membership. It is only representation by the same employee organization that is prohibited.

A review of other states, while providing no appropriate precedent, is helpful in that it reflects the attitude that generally there is no great conflict of interest in permitting representation for supervisory employees in the public sector. In the public sector in Hawaii, the Legislature apparently concluded that the affinity between supervisory and non-supervisory employees was greater than the conflict of interest, because the Legislature in Hawaii gave supervisory public employees the right to join the same employee organization as non-supervisory employees for representation. But required separate units for supervisory and non-supervisory employees.[9]

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[8] Firefighters Union v City of Vallejo (1974) 12 Cal. 3d 608 which sanctions the use of federal precedent in interpreting identical or analogous language in California labor legislation.

[9] Hawaii Statutes Annotated, section 89-6

In Connecticut the Municipal Employee Relations Act includes supervisory employees in the same unit as non-supervisory employees if supervision is not their principal function.[10] In Washington, D.C. municipal supervisory and non-supervisory employees may join the same employee organization, but they cannot be represented in the same unit.[11] Public school employees carry the prohibition that "No unit will be established if it includes: (2) any supervisor together with other employees."[12] In Florida, supervisory employees are placed in the same unit with professional employees.[13] In Wisconsin, police and fire supervisors are required to have their own separate unit.[14] Michigan permits the same employee organization to represent both supervisory and non-supervisory employees provided they are in separate bargaining units,[15] while requiring that all persons with supervisory rank within a department be included within one supervisory unit.[16]

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10 M.E.R.A. section 7-471(2)

11 District Personnel Manual, item 8

12 District Board of Education Rules, section 5.9

13 Florida Nurses Association (Southeastern Valusia Hospital District) (PERC 1976) Case No. 8 H-RC-751-0019; Florida Nurses Association (PERC 1976) Case No. 8 H-RC-761-0082; In the Matter of the State of Florida (PERC 1976) Case No. 8 H-4-3

14 Wisconsin State Employment Relations Act, section 111.70(3)(d)

15 In re City of Livonia, (MERC 1975) Lab. Op. 96

16 In re Northern Michigan University (MERC 1976) Lab. Op.490: In re City of Flushing (L.M.B. 1969)

In summary, no state follows the LMRA view that supervisory employees may not be represented or may not be represented by an employee organization that is affiliated directly or indirectly with an employee organization that represents non-supervisory employees. Rather, the consideration goes to whether supervisory employees should be included in the same unit with non-supervisory employees in the public sector.

Prior to passage of the EERA, public school employees were governed by the Winton Act[17] which defined public school employee as "any person employed by any public school employer excepting those persons elected by popular vote or appointed by the Governor of this state." All public school employees had the right to join and participate in employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.[18] Thus, for purposes of meet and confer under the Winton

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[17] Education Code section 13080 et seq. repealed July 1, 1976.

[18] Ibid. section 13082

Act, supervisory and non-supervisory employees could be represented by the same employee organization.

Thus the California Legislature could have:

1. precluded coverage of supervisory employees;

2. precluded representation of supervisory employees by an employee organization that was affiliated directly or indirectly with an employee organization that represents non-supervisory employees;

3. looked to other states and precluded inclusion in the same unit;

4. continued the Winton Act framework wherein the same employee organization could represent both supervisory and non-supervisory employees.

The California Legislature followed a separate framework and precluded only representation by the same employee organization.

"Same" is defined as resembling in every way: not different in relevant essentials; conforming in every respect; being one without addition, change or discontinuance: having one nature or individuality; corresponding so closely as to be indistinguishable.[19]

By definition, it is clear that SEIU Local 699 is not the same as SEIU Local 99. They have separate officers, jurisdiction over separate employee classifications (supervisory and non-supervisory) and a separate dues structure and treasury with which to carry out their programs. The fact that they are both affiliated with the International and Joint Council 8 does not make them the same. While each will pay the per capita tax required by the International

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19 Webster's Third New International Dictionary, unabridged, (1976) at 2007.

and Joint Council 8, each entity will determine through its membership and executive board whether to utilize the services of the International and Joint Council 8.

Members of SEIU Local 99 have no vote on the election of officers for SEIU Local 699, on the amount of dues to be paid to SEIU Local 699, on the conduct of negotiations by SEIU Local 699, or the ratification of negotiations conducted by SEIU Local 699, and no right to be represented by SEIU Local 699. Indeed, the by-laws of SEIU Local 699 do not admit non-supervisors to membership. Based on this autonomous structure, it is found that SEIU Local 699 is not the same employee organization as SEIU Local 99.

The District urges the finding that SEIU Local 99 and SEIU Local 699 are the "same organization" and that two separate organizations can be found only if there is a complete separation between them and complete autonomy on behalf of each. This finding is rejected. SEIU Local 699 and SEIU Local 99 are not the same as the foregoing has indicated. They are essentially autonomous entities, each of which is affiliated with the International. If the Legislature had intended to preclude representation of supervisory and non-supervisory employees by employee organizations which are affiliated with the same international organization, they would have done so by adopting the LRMA language relative to units of guards. They did not do so.

The District argues that each local of the International is subordinate to the International and merely a subdivision of the International. This ignores the constitutional provision which provides for disaffiliation.

In further support of its position, the District calls attention to Article XV, section 1[20] of the International Constitution for the proposition that this provision would prohibit a supervisor from recommending dismissal of another member of SEIU International. The article, it must be assumed, is not intended or designed to require any employee to fail to fully perform his or her job function. More importantly, however, such a conflict is inherent to section 3545(b)(2) in that the section requires that all supervisory employees be included within the unit. Thus, for example, a supervisory unit might well include a director of maintenance and operations, an assistant director of maintenance and operations, a head custodian and an assistant head custodian, all of whom are supervisors within the meaning of section 3540.1(m),[21] and all of whom supervise other persons within the same unit with the exception of the lowest ranking supervisor within a district's hierarchy. With this built-in conflict already included within the statute, this argument of the District does not provide a basis for finding that the Legislature intended to preclude representation of supervisory and non-supervisory employees by affiliated autonomous local unions.

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[20] Supra at p. 8

[21] Section 3540.1(m) states:

> "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Next the District calls attention to that portion of the International Constitution,[22] which requires prior approval by the International general president before a local union can call a strike, and argues that members of other SEIU local unions would be required to honor the picket line; indeed, the District argues that the International and SEIU Local 99 could compel the supervisory members of SEIU Local 699 to honor the picket line of SEIU Local 99.

The obvious fallacy of this line of reasoning rests in the premise. Under the Winton Act, supervisors and non-supervisors were represented by the same employee organization and strikes by public sector employees were unlawful. Under the EERA, supervisory and non-supervisory employees are not permitted to be represented by "the same" employee organization. Strikes are still unlawful. Thus, the possibility of an unlawful strike is not a basis for finding two separate entities to be "the same" employee organization. Since the courts of California have consistently found that strikes by public employees are unlawful,[23] this clause does not threaten the District which has a speedy, immediate remedy available to it through the courts. Further, it is doubtful that the witness who testified that this was the meaning of Article XI and XV was aware of how those articles had been interpreted by the International since he was only a recent hire by the International. Article XI, on its face, allows the International to veto a strike. Nowhere does it require a group of employees to

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[22] See Article XI, supra at p. 8

[23] See City and County of San Francisco v Nathan B. Cooper, George A. Bangs (1975) 13 C 3d 898 [120 Cal. Rptr. 707; 534 P 2d 403]; Los Angeles Unified School District v United Teachers of Los Angeles (1972) 24 CA 3d 142 [100 Cal. Rptr. 806]; Pasadena Unified School District v Pasadena Federation of Teachers (1977) 72 C.A. 3d 100, [140 Cal. Rptr. 41] mod. at 72 CA 3d. 763d [_____Cal. Rptr.____].

initiate a strike or a secondary group of employees to honor a picket line; nor does Article XV.[24]

Further, the Constitution deals only with members. Without question, an employee organization cannot fine non-members,[25] and must represent all employees within the unit,[26] without regard to membership. Nor can a union discipline members for refusing to participate in unprotected or unlawful activity.[27]

Because members from any local may be elected to the International executive board, the District argues that this could create a conflict of interest in relation to the District and this was what the Legislature intended to prevent in passage of section 3545(b)(2). As one possible vote in a 35 member executive board, this argument is, indeed, remote. And, again, if this was the intent of the Legislature they would have precluded representation of supervisory employees by an employee organization that was affiliated directly or indirectly with an employee organization that admitted non-supervisory

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24 Supra at p. 8.

25 The LRMA, section 8(b)(1)(a) prohibits an employee organization from restraining or coercing employees for the exercise of rights guaranteed by that Act. Likewise, the EERA section 3543.5(b) prohibits an employee organization from restraining or coercing employees for the exercise of rights guaranteed by the Act. The United States Supreme Court has prohibited employee organizations from disciplining non-members or members who resign for crossing a picket line - See Machinist Lodge 405 (Boeing Co.) v. NLRB (U.S.S.C. 1973) 412 U.S. 84 [83 LRRM 2189]; NLRB v. Textile Workers Local 1029 (International Paper Machine Box Co.) (U.S.S.C. 1972) 409 U.S. 213 [81 LRRM 2853].

26 Section 3544.9 states:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

27 See Insurance Workers, et al (1978) 236 NLRB No. 50; NLRB v. International Union of Marine & Shipbuilding Workers of America, et al (1968) 391 U.W 418; Local 138, International Union of Operating Engineers (1964) 149 NLRB 674.

employees. Instead, the Legislature only prohibited membership in the same organization.

Describing Joint Council 8 as a subsidiary of the International, the District claims there is no autonomy between the International and SEIU Local 699 because Joint Council 8 has permitted SEIU Local 699 to use office space and equipment without charge.

The free use of space and equipment donated by Joint Council 8 is not evidence of control of SEIU Local 699. Since it is interim elected officers and applicants for membership who are supervisory classified employees of public school districts who conduct all of the business of SEIU Local 699, the free use of office space and equipment without requiring something in return is incidental only.

The single exception to the above is Thomas Zuniga, an International organizer, assigned to SEIU Local 699, who is interim secretary/treasurer and has voted on the business of SEIU Local 699. Robert Anderson, an International organizer, helped with the writing of by-laws for SEIU Local 699, but has had no vote on official business.

The participation of Anderson was minimal. Zuniga has been more active, but once the local begins to function fully and conducts elections of regular officers, he will have no standing to run for office and no standing to obtain membership in the local.

While Zuniga and Anderson helped in the formation of SEIU Local 699, it is clear that every step has followed a democratic process and virtually all acts, including the adoption of by-laws, the determination to request recognition, the setting of dues and the determination of

interim officers has been by a vote of the "members". Notice has been sent and monthly meetings conducted from the inception of SEIU Local 699 for this purpose.

It is obvious that control is in the hands of the members and their elected executive board. Neither the International nor Joint Council 8 can be said to dominate this fledgling local. At most, the International has rendered guidance.

PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this matter, it is the Proposed Order that:

> Classified Union of Supervisory Employees, Local 699, SEIU, AFL-CIO is NOT the same employee organization as Los Angeles City and County School Employees' Union, Local 99, or Service Employees Joint Council No. 8 of Southern California, or Service Employees International Union, AFL-CIO, CLC., within the meaning of section 3545(b)(2) of the EERA.
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> The appropriate unit for an election consists of:
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> All supervisory classified employees[28] of the employer excluding management and confidential employees and excluding all non-supervisory classifications.

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[28] SEIU Local 699's request for recognition lists the classifications sought in its proposed unit. The record does not reflect that this includes all supervisory classified employees of the employer. Only a unit which includes all supervisory classified employees of the employer is appropriate (section 3545.(b)(2).

Jurisdiction is retained to determine any questions relating to whether the unit includes all supervisory employees and/or excludes all management or confidential classifications, if the parties are unable to resolve these issues between themselves.

The parties have 20 calendar days following the date of service of this Proposed Decision in which to file exceptions in accordance with the California Administrative Code, title 8, section 32300. Pursuant to the California Administrative Code, title 8, section 32305, this Proposed Decision shall become final on July 17, 1978, unless a party files a timely statement of exceptions.

Within ten (10) workdays after this decision becomes final, the employee organization shall demonstrate to the Regional Director at least 30 percent support in the above unit. The Regional Director shall conduct an election if the employee organization qualifies for the ballot and the employer does not grant voluntary recognition.[29]

The date used to establish the number of employees in the above unit shall be the date of this decision unless another date is deemed appropriate by the Regional Director and noticed to the parties. In the event another date is selected, the Regional Director may extend the time for employee organizations to demonstrate at least 30 percent support in the unit.

dated: June 23, 1978

Sharrel J. Wyatt
Hearing Officer

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[29] Voluntary recognition requires majority proof of support in all cases. See Gov. Code Secs. 3544 and 3544.1.