

**VACATED by Los Angeles Unified School District (1987)**  
**PERB Decision No. 424a**

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS ANGELES UNIFIED SCHOOL DISTRICT	)	
	)	
Employer,	)	Case No. LA-R-835
	)	
and	)	
	)	
SUPERVISORY EMPLOYEES UNION,	)	PERB Decision No. 424
LOCAL 347, SEIU, AFL-CIO,	)	
	)	October 24, 1984
Employee Organization.	)	
	)	
LYNWOOD UNIFIED SCHOOL DISTRICT,	)	
	)	
Employer,	)	
	)	
and	)	Case No. LA-R-858
	)	
SUPERVISORY EMPLOYEES UNION,	)	
LOCAL 347, SEIU, AFL-CIO,	)	
	)	
Employee Organization.	)	
	)	

Appearances: Joel M. Grossman, Attorney (O'Melveny & Myers)  
for Los Angeles Unified School District; Douglas D. Barnes,  
Attorney for Supervisory Employees Union, Local 347, SEIU,  
AFL-CIO.

Before Hesse, Chairperson; Tovar and Morgenstern, Members.

DECISION

MORGENSTERN, Member: These consolidated cases are before  
the Public Employment Relations Board (PERB or Board) on  
exceptions filed by the Los Angeles Unified School District  
(LAUSD or District) to the proposed decision of a PERB hearing  
officer. The hearing officer found that Supervisory Employees  
Union, Local 347, SEIU, AFL-CIO, is not the same employee

organization as Los Angeles City and County School Employees Union, SEIU, Local 99 (Local 99), within the meaning of subsection 3545(b)(2) of the Educational Employment Relations Act (EERA or Act)<sup>1</sup> and, therefore, Local 347 is not precluded from representing a unit of supervisory employees who supervise rank-and-file classified employees represented by Local 99.

The Board has reviewed the hearing officer's proposed decision in light of the District's exceptions and the entire record in this matter. We affirm the proposed decision for the reasons stated in the discussion which follows.

#### PROCEDURAL HISTORY

On October 18, 1978, the Classified Union of Supervisory Employees, SEIU, Local 699 (Local 699),<sup>2</sup> requested recognition as exclusive representative of a unit of LAUSD's classified supervisory employees. On February 14, 1979, LAUSD

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code unless otherwise indicated.

Subsection 3545(b)(2) states:

(b) In all cases:

. . . . .

(2) 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.

<sup>2</sup>As discussed infra, Local 699 merged with Local 347 in January 1982.

denied voluntary recognition because, among other reasons, it believed that Local 699 was the same employee organization as Local 99 which was, and is, the exclusive representative of classified rank-and-file employees at LAUSD who are supervised by members of the proposed supervisory unit.

On April 28, 1981, Local 699 requested recognition by Lynwood Unified School District (Lynwood USD). This request set in motion a chain of events similar to those in the LAUSD request for recognition.

PERB ordered both requests held in abeyance pending resolution of the identical legal issue involving the same two locals in the Los Angeles Community College District (LACCD).<sup>3</sup>

On October 8, 1981, Local 699 requested that PERB reactivate the instant petitions. On March 9, 1982, PERB consolidated the instant cases for hearing. LAUSD and Lynwood USD moved to dismiss the petitions on the grounds that the Court of Appeal decision in the LACCD case resolved the same employee organization issue and that the doctrines of res judicata and collateral estoppel precluded relitigation of the

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<sup>3</sup>In Los Angeles Community College District (3/25/80) PERB Decision No. 123, the Board found that Local 699 was not the same employee organization as Local 99. The Court of Appeal reversed and remanded to PERB in a decision which was ordered unpublished by the California Supreme Court. Thereafter, pursuant to the Court of Appeal's remand, PERB issued Los Angeles Community College District (12/16/81) PERB Decision No. 123a holding that, on the facts of that case, as of March 25, 1980, Local 699 and Local 99 were the same employee organization.

issue. In Los Angeles Unified School District/Lynwood Unified School District (8/27/82) PERB Order No. Ad-132, the Board held that the Court of Appeal decision was not res judicata of the instant cases.

Hearings on the merits of the instant cases were conducted on October 26-28 and November 16, 1982, and February 22, 1983. The hearing officer's proposed decision issued on October 6, 1983.

#### FACTS

##### Relationship to the Service Employees International Union (International)

Local 699 held its first meeting in early 1977. For a period of at least eight months, Local 699 was assisted in its formation and organizing by the International. Thomas Zuniga, an International officer paid by the International, was an officer of Local 699, though he was not a member of Local 699. Zuniga signed Local 699's request for recognition of the supervisory unit and helped draft Local 699's constitution and bylaws. He also handled grievances for rank-and-file employees in Local 99 and received his pay at Joint Council No. 8's office which was rented from Local 99. In addition, the chief organizer for Local 99 supervised the chief organizer for Local 699.

In August 1978, Local 699's president appointed Robert Hunt as interim Secretary-Treasurer, Local 699's first paid staff position. Hunt was then paid by the International. For one

week during fall 1978 and one week during winter 1978-79, the International provided four or five field organizers to Local 699 at no cost. In addition, International organizer Bob Anderson represented Local 699 in the PERB hearing on the LACCD case during this period. The International provided about \$1,000 to Local 699 during the latter part of 1978.

In January 1979, after election by the membership of Local 699, Hunt assumed office as Secretary-Treasurer. From that date to the present, Hunt's salary has been paid entirely by the Local.

In March 1979, Local 699 moved with Joint Council No. 8 to another location. During the fall of 1979, the Joint Council provided the services of Political Coordinator Woody Fleming, who organized phone banks and voter registration for the November 1979 Compton Unified School District elections; in addition, the International provided a research specialist, Paul Nawrocki, to assist in the presentation of an unfair practice charge.

In the spring of 1980, Local 699 moved into its own offices in building space paid for by Los Angeles County Employees Union, SEIU, Local 434, and Los Angeles City Employees Union, SEIU, Local 347. During July and December 1980, Research Specialist A. J. Lindemann assisted Local 699 in the processing of two grievances. Fleming again provided political assistance with the 1981 Compton school board election as an employee of the State Council.

Local 699 received about \$8,000 in subsidy money from the International over 10 months ending in March 1981. No subsidy money has been provided by the International since that time. No subsidy money was ever received from the Joint Council, the State Council or Local 99.

#### Merger with Local 347

During the summer of 1981, Local 699 began considering a change in its organizational structure in order to reduce its expenditures. It requested merger bids from three southern California SEIU locals (Locals 347, 434 and 660).

Local 699 determined that merger with Local 347 was the most cost-effective in that Local 347 proposed to furnish, and does furnish, free rent, copying services, utilities, and certain member benefits, such as a vision care program. The merger was approved by a vote of the membership in December 1981 and by the International in January 1982. Under the merger, Local 699 has become the Supervisory Employees "Division" of Local 347, distinct from the City Employees Division. The City Employees Division does not represent any rank-and-file employees of LAUSD or Lynwood USD. The Supervisory Employees Division maintains its own constitution and bylaws and holds separate membership and executive board meetings, either at its office or on the premises of LAUSD. The Division maintains separate officers and staff who do not report to the officers of the City Employees Division. The Division pays separate per capita taxes to the International

and maintains separate financial records, including records of receipts. However, the Division's revenues (principally dues payments) are merged with the City Employees Division's general fund, and the Division's expenses are paid from that general fund. The separate name and records are designed to facilitate dissolution of the merger, should the Divisions decide to do so at some future time.

Neither Local 347 nor the Division share staff, membership meetings, office space or budget with Local 99, the Joint Council, the State Council or the Western Conference. In 1982, the Supervisory Employees Division of Local 347 received \$3,000 from its strike fund for legal costs related to the LACCD case.

#### Local 99's Relationship to the International

In the summer of 1978, International organizer Bob Anderson coordinated Local 99's successful election campaign in LAUSD. In 1980 and 1981, International Research Specialists Paul Nawrocki and A. J. Lindemann performed research for Local 99. In December 1980, Lindemann participated as a factfinding panel member for Local 99. Also in 1980, Nawrocki sat in on five negotiating sessions between Local 99 and LAUSD and acted as an advocate on behalf of Local 99 with respect to certain contract litigation. On several occasions in 1979 and 1980, Nawrocki and Lindemann performed services for Local 99 and for Local 699 during the same week. In August 1982, Howard Friedman, Secretary-Treasurer of Local 99, met with Bob Anderson to discuss a possible decertification campaign.

In 1980, Local 99 received an interest-free loan of \$70,000 from the International from its strike fund. Local 99 received approximately \$7,500 in 1981 and \$62,000 in 1982 from its strike fund for political purposes.

#### The International Constitution and Bylaws

Pursuant to its constitution and bylaws, the International is governed by its president, secretary-treasurer, nine vice-presidents and 36 other executive board members elected by delegates to an International convention. The constitution may be amended by a majority of votes cast by convention delegates. Conventions are held regularly every four years or at special times when called by the International executive board. Local unions may send one delegate for each 500 members up to 5,000 members and one delegate per 1,000 members thereafter. Based upon their present membership figures, Local 347 could send one or two delegates and Local 99 approximately 15.

Between conventions, the executive board acts on behalf of the International, with authority for the daily operation of the International resting with the president. Two or three executive board meetings are held annually, supplemented by intermittent voting by mail. Friedman and Walter Backstrom, Secretary-Treasurer of the City Employees Division, Local 347, are members of the International executive board.

Among other authority, the International executive board may merge existing local unions and decide jurisdictional



questions involving local unions. The record reveals that a jurisdictional dispute arose between Local 699 and Local 99 in early 1980. At that time, an estimated 400-600 supervisors within Local 699's jurisdiction were members of Local 99. When Local 99 refused Local 699's request for assistance in transferring the membership of these supervisory employees, Local 699 asked the International to intervene on its behalf. In April 1980, a meeting was held between Hunt, Friedman and International Vice President Tim Twomey, at which time Locals 699 and 99 agreed to resolve the issue by Friedman's signing of a letter for Hunt's use in his organizing efforts. The record also evidences a jurisdictional dispute between Locals 535 and 616 in Alameda County in early 1982, which was resolved by agreement of the locals after hearing by another International vice president.

The International constitution supersedes that of a local union in the event of a conflict. Intentional failure to enforce the provisions of the International constitution subjects a local union to possible suspension or revocation of its charter.

The International president may appoint a trustee to run the affairs of a local union:

[I]n accordance with applicable statutes, for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the

legitimate objects of this International Union, whenever the International President has reason to believe that such action is required. (Article VIII, sec. 7(a).)

A trustee has authority to remove all officers of a local union and to take possession of the funds and other property of a local union placed in trusteeship. If the local union is dissolved through revocation of its charter, any remaining assets of the local union become the property of the International. Trusteeships may be appealed to the International executive board. With respect to southern California locals, the record reveals that Joint Council No. 8 was placed in trusteeship in 1975 through 1977 and again in February 1980 for a period of about 18 months; Local 102 was placed in trusteeship in 1981 for violation of International bylaws in the conduct of an election, including the candidacy of an individual who was not working within the jurisdiction of the union; and Local 690 was placed in trusteeship for failure to pay per capita dues.

The International constitution sets the minimum dues for all members of any local union, subject to waiver by the International president with the approval of the International executive board. At the time of hearing, the per capita tax paid to the International was \$2.55 per member per month. Of this amount, not more than five cents is set aside for political education and action with no more than two and one-half cents returned to the local union for that purpose.

Thirty cents is set aside as a strike fund and reimbursed to the local union in the event of authorized strikes or lockouts or, for public employees, for other purposes approved by the International president.

All local union executive boards are required to meet once a month, except through waiver granted by the International president. International approval is required to cancel a general membership meeting and to hold a fund-raising event. Strikes may be vetoed by the International president.

All local unions are required to become members of state councils and joint councils, although this requirement has been waived in some cases. Local 347 and Local 99 are both members of the California State Council of Service Employees, Joint Council No. 8, and the Western Conference of Service Employees. These bodies provide local unions with membership or political organizing assistance, legislative lobbying (in Washington and Sacramento), research and negotiating assistance, strike support activities and dissemination of information.

Discipline of members is principally a function of the executive board of the local union. However, the International president may assume original jurisdiction if he or she feels that the charged conduct may seriously jeopardize the interests of the local union or the International. The decision of the local union executive board or the International president is appealable to an appeals committee at the next International

convention or, in the case of expulsion from membership, to the convention itself. Discipline, other than expulsion, may be appealed to the convention with the consent of that body.

Local unions and their officers or members may be disciplined for, inter alia: violation of the constitution, bylaws, oath of loyalty, oath of office, regulations, rules, mandates or decrees of the International or the local; gross inefficiency, financial malpractice, corrupt or unethical practices or racketeering, or the wrongful taking or destruction of property; dual unionism or secession; working as strike breakers or violating wage or work standards; and bringing false charges against a member or officer without good faith or with malicious intent.

In addition, the International constitution states that:

No member of this International Union shall injure the interests of another member by undermining such member in connection with wages or financial status or by any other act, direct or indirect, which would wrongfully jeopardize a member's office or standing. (Article XV, section 1.)

Several witnesses were questioned at length as to whether these constitutional provisions prohibit a supervisor from crossing a rank-and-file picket line in the event of a strike, or from disciplining a rank-and-file employee. Tim Twomey testified that, during the more than 10 years that he has been a member of the International executive board, that body has never had occasion to consider this issue; neither has he ever heard of a local union being placed in trusteeship because its

members crossed the picket line of another local. It is Twomey's personal opinion, supported by informal discussions with other members of the International executive board, that the constitution does not prevent such actions by a supervisor. Twomey testified that he is aware of instances, in hospital settings, where supervisory members have discharged subordinate members.

Howard Friedman testified that he was unaware of any local crossing the picket line of another local. However, in his opinion, the International could not order a local's members not to cross a picket line, nor take any disciplinary action against the local for that reason. Paul Nawrocki testified that, during a strike at the Hollywood Park racetrack with which he was involved, members of one local union of the International did cross the picket line of another local union. To his knowledge, no disciplinary action was taken against those members. In a deposition introduced into evidence in the LACCD case in March 1978, Thomas Zuniga, then an employee of the International, stated that crossing a picket line would, in effect, violate the constitution, but that he was not familiar with the International's position on the matter.

#### DISCUSSION

The District contends that Local 347 and Local 99 are each the alter ego of the International and are, therefore, "the same employee organization" within the meaning of subsection

3545(b) (2). It argues, first, that the hearing officer erred in relying on Sacramento City Unified School District (3/25/80) PERB Decision No. 122 as the leading case interpreting subsection 3545(b) (2). According to the District, Fairfield-Suisun Unified School District (3/25/80) PERB Decision No. 121 provides "a more reasoned analysis" and should be afforded greater weight.

After careful consideration of these companion cases decided on the same date, we reaffirm the analysis and general standard for interpreting subsection 3545(b) (2) stated in Sacramento City, and find that Fairfield-Suisun identifies the critical factors to be considered in applying that standard. Thus, the two cases are consistent and, read together, set forth the proper analysis to be applied in this case.

In Sacramento City, the Board held that two employee organizations which are affiliated with the same international will be found to be the same employee organization if "either organization in fact dictates the other's course of action," or "if their parent organization in fact controls both of them in such a manner and to such degree as to render those locals mere alter egos of the international, unable to determine and control their own course of action." However, if two affiliated locals "are in fact separate and autonomous entities that act independently from each other and from their common parent," they will not be considered the same employee organization. (Pp. 14-15.)

The Board fashioned this test based on its analysis of the purpose of the statute. The Board noted that, though EERA defines "supervisor" in a manner similar to that of the National Labor Relations Act (NLRA), supervisors are excluded from coverage under the NLRA, while the EERA grants representational rights to supervisors. Thus, the Board majority found that subsection 3545(b) (2) was designed

. . . to serve to some extent purposes similar to those served by the NLRA's exclusion of supervisors: to protect management's interest in the undiluted loyalty of those employees to whom it delegates supervisory responsibilities and to guard against potential conflicts of interest between supervisors and the employees they supervise. (P. 13.) (Emphasis added.)<sup>4</sup>

However, unlike the NLRA, EERA's provision granting representation rights to supervisors is "a compromise."  
(Sacramento City, supra, p. 12.)

The Legislature determined not to avoid the tension between the interests of management and its supervisory employees, but to minimize this tension. . . . Thus, the Legislature struck a balance between the supervisory employees' interest in negotiating collectively and the employer's

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<sup>4</sup>In his concurring opinion, at p. 19, Chairperson Gluck found an additional legislative purpose underlying subsection 3545(b) (2):

The need to avoid conflict between supervisory and nonsupervisory employees within the labor organization and the potential for domination of that organization by either one of the two groups. (Emphasis in original.)

interest in preventing its supervisors from sharing the specific organizational aims of their subordinates. (P. 13.)

Neither did the Legislature follow section 9(b) (3) of the NLRA which prohibits certification of a union as the exclusive representative of plant guards, "if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." (Emphasis added.)

Because the Legislature declined to adopt an "affiliation" test to disqualify an employee organization from representing supervisors, mere affiliation with the same international is insufficient to render two locals the "same employee organization." Rather, in each case, it is necessary to determine the actual extent of control exercised by an international and the degree of autonomy and independence of action of the affiliated locals. Applying that test, the Board concluded that the two SEIU locals at issue in Sacramento City were not the same employee organization.

Conversely, in Fairfield-Suisun, the Board affirmed the hearing officer's conclusion that two chapters of the California School Employees Association (CSEA) were the same employee organization. There, the state CSEA was a named party, both to the recognition agreement and contract between the district and one of the chapters, and to the request for recognition filed by the other chapter. Therefore, if the petition were granted, the state CSEA, in addition to the two



local chapters, would be recognized as the exclusive representative for both the supervisory and nonsupervisory employees of the district. The Board affirmed the hearing officer's conclusion that this fact was "alone sufficient to find that the recognition as requested would violate section 3545(b) (2) ." (P. 3.)

The Board additionally stated as a second independent basis for its holding, "[t]he close relationship and many connections between these chapters and the state CSEA." (Ibid.) In addition to the fact that the statewide CSEA had itself joined the request for representation, the crucial features of the relationship which evidenced the state CSEA's impermissible control over its chapters were as follows:

First, the CSEA chapters received significant assistance from field representatives who were paid by CSEA and assigned to a particular chapter for an extended period of time to assist in negotiations, grievance handling and contract administration. In addition, the field representative assigned to the rank-and-file chapter was supervised by the field representative assigned to the supervisory chapter, who, on one occasion, substituted for the representative of the rank-and-file unit during contract negotiations.

In addition, the great majority of dues paid by chapter members went to the state CSEA, which retained such financial

control as deciding how to spend money to process grievances.<sup>5</sup>

In the instant case, the SEIU International is not named on Local 347's representation petition and is not a party to Local 99's collective bargaining agreement with LAUSD. After Local 699's formation in 1977 and 1978, the research and political assistance provided by the International here was extremely limited and intermittent and cannot be characterized as "significant." Indeed, the record contains no evidence of any

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<sup>5</sup>We reject LAUSD's contention that Fairfield-Suisun establishes a 15-factor test for determining whether two locals are the same employee organization. Apart from the critical factors outlined above, only the first two factors cited by the District are mentioned in the hearing officer's discussion. The remaining points appear only in the hearing officer's findings of fact and were not relied on by the Board in reaching its conclusion.

The additional factors identified by LAUSD are as follows:

- (1) All concerted activities by local chapters must be approved by the parent body;
- (2) Members of a local chapter may become officers of the parent body;
- (3) Special services are provided to members of both chapters, including life insurance and discounts on merchandise;
- (4) Local chapters are required to adopt a constitution and bylaws which conform to and are approved by the parent body;
- (5) All members of local chapters are members of the parent body;
- (6) All concerted activities by local chapters must conform to the parent body's constitution and bylaws;
- (7) Each chapter sends delegates to the parent body's convention and has equal

staff assistance provided by the International or any of its affiliates since Local 699's merger with Local 347 in January 1982. Rather, the business of the locals -- negotiations, grievances and contract administration -- is conducted by the staff of the locals under the control of the locals' membership and executive boards. Finally, not a "great majority," but less than 20% of local dues goes to the International in per capita payments.

Therefore, applying the factors which were critical to our decision in Fairfield-Suisun, we find no evidence that the International:

. . . in fact controls [Local 347 and Local 99] in such a manner and to such a degree as to render those locals mere alter egos of the International, unable to determine and control their own course of action.  
Sacramento City, pp. 14-15.

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voting rights based on the size of the chapter;

(8) The parent body has authority to expel from membership any member for "conduct detrimental to the Association;"

(9) The parent body may adopt a policy governing discipline, which would prevail over the bylaws or policy provisions of any local chapter;

(10) Members of local chapters contribute to a building fund for construction and maintenance of headquarters for the parent body; and

(11) In choosing Area Directors, each chapter has one vote, determined by a plurality of its membership.

The District argues that, notwithstanding the absence of evidence that the International actually controls the locals, evidence of "potential for domination" is sufficient to establish an impermissible degree of control. Specifically, the District argues that the potential for International control of the locals is evidenced by provisions of the International constitution which: grant the International "jurisdiction and supervision" over all local unions and their members and authority to veto strikes and impose trusteeships; require a local to pay per capita taxes before any other bill; require local constitutions to be approved by the International and to conform to its constitution; and prohibit "injur[ing] the interests of another member." The District also refers to provisions contained in a "Manual of Common Procedure," which require all members of a local to be members of the International and to pledge their loyalty to the International.

According to the District, because a subsection 3545(b) (2) determination occurs before the certification of an exclusive representative, it must of necessity be based on potential, rather than actual, abuse. In addition, the District claims that it is necessary to consider the potential for domination in order to effectuate the Legislature's purpose of assuring supervisors' loyalty to their employer.

In Sacramento City, as in the instant case, the district argued that the SEIU International's impermissible control of

its locals was demonstrated by "the regulatory powers the International's constitution gives it over the locals."

(P. 15.) The Board found that certain provisions of the International constitution (including the International's power to impose trusteeships, to merge locals, and to enter into national, regional, or areawide collective bargaining agreements) "arguably pose a threat of the kind of control that could result in the type of conflict of interest section 3545(b) (2) was designed to prevent." (Pp. 15-16.)

However, the Board found that each of these threats is mitigated by other provisions of law, that the existence of these provisions does not prevent the International from exercising its powers in ways that are consistent with the EERA, and that, if at a later date the International does attempt to exercise its authority in a manner inconsistent with the EERA, the Board can then reevaluate the relationship and take whatever steps are necessary to serve the purposes of the Act. Thus, the Board concluded that:

. . . the mere potential for the International to exercise its lawful powers in a manner inconsistent with the purposes of section 3545(b) (2) is insufficient in our view to disqualify sister locals from representing rank and file and supervisory employees in separate units in the same district. (P. 17.) (Emphasis added.)

Similarly, the factors which we have found to be critical indications of control in Fairfield-Suisun refer to evidence of actual control and do not rely on mere potential for control contained in provisions of the CSEA constitution.

We reject the District's argument that, because a subsection 3545(b) (2) determination occurs before certification, it must of necessity be based on potential rather than actual conditions. This argument ignores the fact that Local 347, Local 99, the International and the relationship between them existed prior to, and independent of, certification in any particular district.

We also reject the District's oversimplified view of legislative intent. By defining supervisors as employees under the Act and permitting them to organize and to join an affiliated local, the Legislature did not preclude the possibility that supervisory employees and the rank-and-file employees they supervise will on occasion have mutual goals which depart from those of management. Thus, as we found in Sacramento City, while subsection 3545(b) (2) was intended to address the problem of supervisors' divided loyalty, the legislative solution did not eliminate the possibility of divided loyalty, but was "a compromise" that "struck a balance" by "minimiz[ing] this tension."

Moreover, many, if not most, of the constitutional provisions to which the District objects are nothing more than standard provisions which are customarily used to define the benefits and obligations of affiliation. While it may be arguable that some "potential for domination" is inherent in any affiliation, as indicated above, the Legislature did not adopt a strict affiliation test like that contained in section

9(b)(3) of the NLRA. Thus, by its "potential for domination" test, the District would have us indirectly write into the statute an affiliation test which the Legislature declined to adopt.

We, therefore, affirm the hearing officer's conclusion that evidence of actual domination is required to show that two locals are alter egos of the International with which they are affiliated. The mere fact that the International constitution contains provisions that could conceivably be enforced in such a way as to effect domination does not demonstrate that such domination has occurred or ever will occur.

This is not to say that we will not consider the "potential for domination" found in union constitutions and bylaws as a factor in determining whether actual domination exists. Certainly, pressure can be exerted on affiliated locals in ways that may not be easily discernible. The threat of sanctions or trusteeship may be used to preclude independent action by local entities where constitutional provisions and past practice lend credibility and force to the threat. Thus, we do not foreclose the possibility that actual control and domination might be evidenced where an international constitution establishes an organizational structure and relationship which is inherently intrusive of its locals' autonomy, and the international's established past practice indicates that it has previously exercised its constitutional authority in a manner inconsistent

with the purposes of subsection 3545(b)(2). However, no such evidence is shown.

We, therefore, affirm the hearing officer's conclusion that the record before us here is devoid of evidence that the International has dictated or compelled the locals' course of conduct. Rather, we find that Local 347 and Local 99 are separate and autonomous entities that act independently from each other and from the International.

LAUSD next reasserts its argument, which it claims was erroneously rejected by the Board in Los Angeles Unified School District/Lynwood Unified School District (8/27/82) PERB Order No. Ad-132, that the Court of Appeal decision in the LACCD case is res judicata of the instant case because the same locals are involved. Even if the decision is not res judicata, the District claims that judicial construction of the statute supersedes PERB's contrary construction, notwithstanding the fact that the Court's decision was unpublished.

In PERB Order No. Ad-132, the Board considered and expressly rejected the argument advanced by the District here.<sup>7</sup> We find no reason to reverse our decision, and decline to do so.

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<sup>7</sup>The Board found that, because the Court of Appeal established, as a rule of law, that mere affiliation renders organizations the same, granting conclusive effect to that decision would result in injustice to Local 347 because it

would be subject to a different rule of law than other employee organizations throughout the state which seek to represent



Neither do we find that the Court of Appeal's unpublished decision supersedes PERB's contrary construction of the statute. Because the decision was unpublished, it may not be cited or relied on under Rule 977 of the California Rules of Court.<sup>8</sup>

Finally, the District argues that the Board's decision on remand from the Court of Appeal (Decision No. 123a) that the Locals are the same employee organization is determinative and, according to the District, the facts have not changed significantly since March 25, 1980, the date referenced in the Board's decision.

We disagree. Our decision in Decision No. 123a is narrowly and expressly limited to the facts of that case and to the date

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supervisory employees pursuant to EERA. The Board's current position, as expressed in Sacramento City USD, supra, is that indirect or direct affiliation does not, of itself, render entities so affiliated the "same organization" under subsection 3545(b)(2). (P. 12.)

<sup>8</sup>Rule 977 of the California Rules of Court provides that an unpublished decision "shall not be cited or relied on by a court or a party in any other action except . . . where the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel." See, e.g., People v. Gomez (1972) 26 Cal.App.3d 928, 930-931 [103 Cal.Rptr. 453]; People v. North Beach Bonding Co. (1974) 36 Cal.App.3d 663, 673 [111 Cal.Rptr. 757]; Powers v. Sissoev (1974) 39 Cal.App.3d 865, 874 [114 Cal.Rptr. 868]; People v. Duncan (1974) 40 Cal.App.3d 940, 946 [115 Cal.Rptr. 699]; Gray v. Kay (1975) 47 Cal.App.3d 562, 566 [120 Cal.Rptr. 915]; People v. Elinson (1977) 70 Cal.App.3d Supp. 19, 26. (For a lengthy discussion of the reasons for Rule 977 and its validity, see People v. Valenzuela (1978) 86b Cal.App.3d 427, 438 [150 Cal.Rptr. 314] dissenting opinion.)

of issuance of PERB Decision No. 123, March 25, 1980.

Therefore, that decision is not binding on our decision in this case which must be based on the factual record before us here.

Moreover, contrary to the District's contentions, the relationship with the International has changed since March 25, 1980 in at least two significant respects. First, in the spring of 1980, Local 699 moved into its own offices, thereby greatly reducing the extent of its relationship with Joint Council No. 8 which, until that time, had provided office space, equipment, clerical help and supplies to Local 699. Then, effective January 1982, Local 699 merged with Local 347 and shortly thereafter moved all operations into its own offices. Local 347 is a long-established, self-sufficient local, and the merger of Local 699 into Local 347 served to firmly establish this group's independence from the International and to eliminate any former dependence it may have had on Local 99 or Joint Council No. 8.<sup>9</sup>

We, therefore, conclude that, based on the record before us in this case, Local 347 and Local 99 are not the same employee organization.

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<sup>9</sup>We reject the District's contention that the merger itself evidences domination by the International in that the International approved the merger, and Walter Backstrom, Secretary-Treasurer of the City Employees Division of Local 347, is a member of the International executive board.

ORDER

Based upon the foregoing findings of fact, conclusions of law, and the entire record in this matter, it is hereby ORDERED that Supervisory Employees Union, Local 347, SEIU, AFL-CIO, is not the same employee organization as Los Angeles City and County School Employees Union, Local 99, SEIU, AFL-CIO, within the meaning of subsection 3545(b) (2).

Within thirty-five (35) days after this Decision is no longer subject to reconsideration, the Los Angeles Regional Director of the Public Employment Relations Board shall contact the parties regarding resolution of the outstanding unit issues, and elections will be conducted to determine whether Supervisory Employees Union, Local 347, SEIU, AFL-CIO, shall be the exclusive representative of the instant employees.

Chairperson Hesse and Member Tovar joined in this Decision.