

STATE OF CALIFORNIA  
DECISION OF THE EDUCATIONAL  
EMPLOYMENT RELATIONS BOARD

NEW HAVEN UNIFIED SCHOOL DISTRICT,  
Employer

and

NEW HAVEN TEACHERS ASSOCIATION, CTA/NEA,  
Employee Organization

and

NEW HAVEN FEDERATION OF TEACHERS,  
LOCAL 1657, CFT/AFT, AFL/CIO,  
Employee Organization

Case No. SF-R-216

EERB Decision No 14

Appearances: Galgani, Breon and Godino, by John Hudak, Attorney, for New Haven Unified School District; Brundage, Beeson, Tayer and Kovach by Duane B. Beeson, Attorney, for New Haven Teachers Association, CTA/NEA; Van Bourg, Allen, Weinberg and Roger, by Robert Bezemek, Attorney, for New Haven Federation of Teachers, Local 1657, CFT/AFT, AFL/CIO.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

PROCEDURAL HISTORY

The New Haven Teachers Association (Association) filed a request for recognition with the New Haven Unified School District (District) requesting recognition as the exclusive representative of certain described certificated employees. The New Haven Federation of Teachers (Federation) subsequently filed an intervention. A hearing was conducted by a hearing officer of the Educational Employment Relations Board for the purpose of resolving the unit questions.

During the course of the hearing the parties stipulated that the certificated unit should include all regular full-time teachers, all regular part-time teachers, lead teachers, counselors, psychologists, resource teachers, curriculum specialists, media specialists, librarians, school {nurses, speech and hearing specialists, substitutes on contract and middle school department heads. The parties also stipulated that the unit should 1 exclude the Superintendent, Assistant Superintendent, district directors, {district coordinators, principals, assistant principals, head counselor, day-to-day substitutes, and management, supervisory and confidential

employees. The parties are in agreement that home teachers working 20 hours or less per week should be excluded from the unit,

#### ISSUES

Several issues are presented by this case. Are the high school department heads and curriculum team members supervisory employees? It is the position of the Federation that these employees are supervisory, while the Association and the District argue they are not supervisory. We find that they are not supervisors.

Are the interns, certificated Comprehensive Employment Training Act staff members, home instructors working more than 20 hours per week, adult school teachers, and summer school teachers appropriately included in the stipulated certificated unit? The Association and Federation urge their inclusion in the unit, It is the position of the District that they should be excluded from the unit because they are casual employees. We need not and do not address the issue of whether they are casual employees because we find that none of these employees are appropriately included in the unit.

#### DISCUSSION

The New Haven Unified School District has an average daily attendance of approximately 8,615 students in grades kindergarten through 12 and adult school. There are 10 sites on which are distributed six elementary schools, two middle schools, one high school and one adult school. The district employs approximately 390 certificated employees.<sup>1</sup>

Government Code Section 3540.1 Cm) defines "supervisory employee,"<sup>2</sup> This section is written in the disjunctive so that an employee need possess

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<sup>1</sup>Annual Report, Financial Transactions Concerning School Districts of California, Fiscal Year 1975-76, published by the State Controller, State of California, and the 1976 California Public School Directory, published by the Superintendent of Public Instruction, State of California.

<sup>2</sup>Section 3540.1(m) provides:

"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.

only one of the enumerated authorities or: functions to be considered a supervisor,<sup>3</sup>

Government Code Section 3545 relates to unit determinations.<sup>4</sup> In the Belmont Elementary School District<sup>5</sup> and Petaluma City Elementary and High School District<sup>6</sup> decisions, the Board discussed the effect of Section 3545(b)(1), regarding classroom teachers, upon its unit decisions. We are required to consider the criteria set forth in Section 3545(a) in this decision. No evidence was presented on the criteria of established practices or efficiency of operation with regard to any issues regarding the appropriateness of the unit.

#### High School Department Heads

The primary assignment of the 11 high school department heads is as a classroom teacher. However, as department heads, they have additional responsibilities for which they receive additional monetary compensation of from \$600 to \$1800 per year, depending upon the size of the department. Although

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<sup>3</sup>  
~~Sweetwater Union High School District~~, EERB Decision No. 4, November 23, 1976.

<sup>4</sup>  
Section 3545 provides:

(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

(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.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

<sup>5</sup>  
EERB Decision No. 7, December 30, 1976.

<sup>6</sup>  
EERB Decision No. 9, February 22, 1977.

- department heads may work additional hours on personal time, they are not allowed any release time for performing department head duties.

Department heads are responsible for leadership in the development of the subject curriculum both within the department and in coordination with the other departments. Department heads are also responsible for routine administrative matters relating to the department.

Teachers chosen to be department heads are those who show qualities such as being efficient and proficient in their discipline. They usually have four or more years of teaching experience. They are not required to have a specialized credential.

The curriculum responsibilities of department heads involve ensuring that the department's written curriculum is updated and consistent with district policy, and coordinating the development of new courses in the department. All department heads attend regular meetings of the Curriculum Council at which they discuss curriculum matters. Department heads may request teachers to give evidence of planning, pursuant to a district policy requiring teachers to furnish, such evidence. In connection with their curriculum duties, department heads must be familiar with instruction in the classroom as well as the written curriculum and thus on occasion they will informally visit a classroom to observe for five or ten minutes. Such observation is optional, however, and some department heads seldom observe teachers. No written observation reports are made.

In connection with their curriculum responsibilities, department heads preside at regular department meetings and may call additional department meetings. Curriculum matters discussed are grading policies, the manner in which the curriculum and lesson plans are to be written, and the manner and format for submitting testing materials to the administration.

In addition to curriculum responsibilities, department heads are responsible for routine administrative matters relating to the department. Such matters involve presiding at department meetings, monitoring the department budget, keeping inventory of department supplies and equipment, and coordinating the request of teachers for the assignment of classes and classrooms.

Administrative matters discussed at department meetings include the department budget, what to do at an open house, assignment of classes, classrooms and department equipment, and administrative directives channeled from the administration through the department head to the department members.

Department heads exercise merely an accounting function with regard to the budget. At the beginning of each year, each department is allocated a certain amount of money. At department meetings, the teachers set spending priorities through group discussion. Once priorities are set, department heads apply the priorities. They keep track of how the money is spent, how much is left, and in the spring warn the teachers to conserve supplies if money is running short. Department heads are also responsible for keeping inventory of the department's supplies and equipment.

Department heads coordinate teacher requests for the assignment of classes and classrooms. The various departments generally make a group recommendation for assignments based on a department consensus. These assignments are not independent recommendations made by the department heads although they are forwarded to the Principal through the department heads. The Principal assigns teachers to specific classes. The Principal attempts to use, but is not bound by, the department recommendations.

The scheduling of classes is determined primarily by the master schedule. Classroom assignments are determined by the person in charge of the master schedule and the Assistant Principal for Curriculum and Evaluation based upon seniority and logistics such as classroom availability. The Principal or Assistant Principal assigns extracurricular activities to teachers.

In addition to duties regarding curriculum and department administrative matters, department heads have occasional peripheral involvement in personnel matters. Department heads do not, however, have authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline or adjust the grievances of a classroom teacher, or to effectively recommend such action.

Department heads are involved to only a limited extent in the hiring of teachers. The district establishes a screening and interviewing committee consisting of the Principal and several teachers in the department having the job vacancy. The committee includes the department head if available. The department head may be unavailable during the summer months. After each interview, each member of the committee completes a separate evaluation form

and gives it to the Principal. A group recommendation which the Principal may accept or reject, is developed from the collective evaluations. The Principal makes a recommendation to the Director of Personnel who makes a recommendation to the Superintendent. The school board actually hires the teachers upon the recommendation of the Superintendent. The department head does not make a hiring recommendation apart from the evaluation submitted as a member of the interviewing committee.

Transfers are made pursuant to recommendations by the Principal to the district office. Within a school, only the Principal may transfer a teacher from one department to another if the teacher is prepared for duties in the new department. The high school Principal during the 1975-76 school year said he has had comments from department heads that a teacher was not qualified to teach in a particular department and recommending that the teacher be assigned to the department in which he had his major preparation. He stated that he takes new information into consideration no matter what its source. It was not shown that such comments are made by department heads more often than by other teachers.

Only the Superintendent and the school board have the authority to discharge a teacher. Letters of reprimand come only from the Principal. The high school Principal during the 1975-76 school year stated that, as Principal, he recommended the discharge or discipline of employees. When he was Principal, no department head ever recommended the discipline of an employee.

Department heads have no authority regarding the grievances of teachers. If a teacher has a complaint about the way a department is being run, as a general practice and matter of professional courtesy, the complaint will be discussed either at a department meeting or individually with the department head. A teacher who is still dissatisfied will go to the Principal or Assistant Principal for Curriculum and Evaluation. If a teacher has a complaint about another teacher, the preferred way to handle it is by personal confrontation. If the problem is not resolved, the teacher may suggest to the department head that the problem be discussed at the next department meeting.

Promotions require school board action on the recommendation of the Superintendent. However, the annual evaluation of a teacher is presumably a basis for a promotion recommendation. The annual evaluation is based in part upon written reports, termed classroom observations and general observations, which are placed in the teacher's evaluation file. Classroom

observations are completed by members of the curriculum, team and not by department heads. General observations are voluntary and may be completed by any teacher or administrator reporting on a teacher's activities outside the classroom. A general observation may contain positive, negative, or neutral comments. Of 130 general observations completed in the 1975-76 school year, only 17 were completed by department heads. Of the remaining 113, one was completed by a teacher and 112 by administrators. Of the 17 general observations, eight were submitted by one department head, four by another, and five department heads submitted no observations at all.

The Assistant Principal for Curriculum and Evaluation or another administrator, not a department head, will investigate to determine whether or not a teacher has a teaching problem. A department head may be asked to provide assistance to a teacher once it is ascertained there is a problem.

On the basis of the foregoing, we note that department heads are selected on the basis of expertise and experience in the departmental subject matter. Making informal classroom observations, chairing meetings, participating in the hiring process and assisting teachers with teaching problems are all duties of department heads which result from the utilization of their special skills in the departmental subject matter. These activities indicate that department heads are merely more experienced teachers giving advice and assistance to those less knowledgeable. The submission of 17 general observation reports does not indicate department heads are supervisors because they are neither required to submit such reports nor, as a matter of practice, do most department heads regularly submit them.

The administrative activities of department heads regarding the balancing of the budget, inventory of supplies and equipment, assignment of classes, handling complaints about how the department is run, acting as a communication liaison between department members and the administration, and holding meetings, are not supervisory activities, and moreover are merely routine in nature and require little, if any, exercise of independent judgment.

We find there is nothing in the record to demonstrate that high school department heads fall within the Government Code Section 3540.1(m) definition of "supervisory employee." They do not perform or effectively recommend any of the actions listed in the definition. Instead, it is clear that department heads are primarily classroom teachers, and in their assignment

as department heads function only as an experienced employee giving assistance to those less experienced or as an administrative coordinator within a department.

#### Curriculum Team Members

The curriculum team at the high school performs functions relating directly to the implementation and assessment of the curriculum. The members of the team in the 1975-76 school year were the high school Principal, Assistant Principal for Curriculum and Evaluation, and six teachers. The six teacher team members are selected yearly from the staff at large through an application process. A teacher may reapply each year and continue serving if selected. Curriculum team members receive release time for the performance of curriculum team duties.

The responsibility of the curriculum team is to insure that the written curriculum is translated into classroom instruction. In this regard, in 1975-76 two team members made formal written observations of teachers and four made informal unwritten classroom observations. The two, who were teachers, were selected by the Principal and the Assistant Principal for Curriculum and Evaluation.

The formal classroom observation is scheduled by the curriculum team for a minimum of 20 minutes without warning to the teacher. It is for the purpose of curriculum evaluation and results in a written classroom observation report. Usually three classroom observations of each teacher are conducted each year. The written reports are placed in the teacher's personnel file.

The formal classroom observation is also used in the teacher evaluation process. At the end of the school year the Principal reviews the observations when he evaluates a teacher. The Assistant Principal for Curriculum and Evaluation may also review the observations if he has a specific concern about a teacher.

In addition to conducting classroom observations, the members of the curriculum team meet to discuss the written course of study to determine how tests relate to it, determine the readability of books, visit classrooms to observe how the curriculum is implemented in subject areas under intensive review, and write interim and final reports. The team does not discuss the techniques or problems of a particular teacher except as they relate to the curriculum being considered.



We note that the duties of the curriculum team members relate only to the development and implementation of the curriculum. This function is not supervisorial because it does not involve any of the activities listed in Government Code Section 3540,1(m).

The curriculum team members are arguably supervisory only because the written classroom observation reports are used in the annual evaluation process. Presumably, the evaluation process may be part of the basis for a promotion, discharge or other personnel action. The observations, however, are only one source of information for the evaluation. The classroom observation form does not have a section titled "Recommendations," and recommendations regarding the promotion, transfer, suspension, discharge, reward, discipline or assignment of the observed teacher are not made by the observer. There was no evidence regarding the extent to which the observations are relied upon by those who review them as part of the evaluation process. This limited involvement of the curriculum team members in the evaluation process does not give them supervisory status.

#### Interns

Each year the district hires approximately five to seven interns. Interns are hired when it is impossible to find a regular credentialed teacher with the subject combination requirements needed by the district. They have achieved a baccalaureate degree, but have not yet completed their education leading to a teaching credential. They possess a temporary intern credential.

The district has an arrangement with Stanford University to obtain interns. Interns employed by the district continue to attend college on a reduced load basis. They are hired for a semester or full year, but not exceeding a full year. Interns teach either two or three periods a day out of a normal five-period day. While Interns are generally used only in the high school, on occasion an intern has been hired at the elementary or middle school level to work a full day.

An intern functions as a regular teacher, and performs all the extra duties of a regular teacher, such as yard and hall duty. Interns have complete responsibility for the classes taught, but are monitored more closely than regular teachers.

Education Code Sections 133221 et seq., the Teacher Education Intern Act of 1967, provide for special supervisory help and guidance for interns by college and university staff members and by the school district. Section 13236 provides that the district may reduce the normal salary paid to an intern by up to one-eighth in order to pay the salary of the supervisor, although an intern may never be paid less than the minimum salary required to be paid by the state to a regularly certificated teacher. Section 13241 provides that interns shall not acquire tenure while serving on an internship credential, although each year of service as an intern counts toward the achievement of tenure.

While the interns have duties similar to those of the regular teachers, we note that their employment is merely incidental to their education. The Education Code provisions regarding the supervision of interns highlight the educational nature of their work experience. Their continued employment necessarily depends upon satisfactory progress toward their regular teaching credential and they have no expectancy of employment in the district after completion of the credential. Because interns are primarily students, we find they do not share a community of interest with the regular teachers and therefore exclude them from the stipulated unit.<sup>7</sup>

#### Certificated CETA Staff Members

In the 1975-76 school year, the district hired six Comprehensive Employment Training Act (CETA) instructors. The CETA program operates year-round. CETA instructors teach unemployed students between the ages of 18 and 23 who are paid with federal funds to come to class to learn a trade. Students enrolled in the CETA program are not counted as regular or adult students for the purpose of the district's average daily attendance. None of the CETA students attends the regular daily school sessions. The program is supervised by a CETA employee who is not involved in supervising the regular school program,

CETA instructors teach sheetmetal, welding, clerical skills, and other vocational subjects. The instructors hold an adult vocational credential, which does not require a baccalaureate degree, as opposed to a regular teaching

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<sup>7</sup> A pertinent case dealing with medical interns, in Erie County, New York PERB, 9-3029 (1976).

credential. Classes are held at the high school and an additional facility. CETA instructors at the high school teach between the hours of 2:30 and 6:30 p.m. while regular high school classes end at 2:30 p.m. They work as few as 18 hours a week and as many as 37½ hours per week.

CETA instructors are paid on an hourly basis not related to the regular teachers' wage schedule. They do not receive any vacation benefits from the district but may receive regular health and dental benefits if they work 30 or more hours a week. CETA instructors are paid from federal funds which the district solicits on an annual basis. The funding received varies yearly and the number of employees hired also varies yearly depending on the amount received. CETA instructors are classified as temporary because there is no guarantee that they will be reemployed in the succeeding school year. There is no policy or practice of the district regarding the continued hiring of such employees.

Education Code Section 13329 provides that the terms and conditions of employment for employees working in categorically funded programs shall be mutually agreed upon in writing by the employee and the governing board. The section also states that such employees may be terminated at the expiration of the contract or specially funded project without regard to other requirements of the Education Code respecting the termination of probationary or permanent employees.

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<sup>8</sup> Education Code Section 13132.

<sup>9</sup> Education Code Section 13329 provides:

The governing board of any school district may employ persons possessing an appropriate credential as instructors in classes conducted under contract with public or private agencies, or other categorically funded projects of indeterminate duration. The terms and conditions under which such persons are employed shall be mutually agreed upon by the employee and the governing board and such agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district unless (1) such person has served pursuant to this section, for at least 75 percent of the number of days the regular schools of the district by which he is employed are maintained, and (2) such person is subsequently employed as a probationary employee in a position requiring certification qualifications. Such persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of probationary or permanent employees.

This section shall not be construed to apply to any regularly credentialed teacher who has been employed to teach in the regular educational programs of the school district as a probationary employee before being subsequently assigned to any one of these programs.

The foregoing facts show that the CETA program is entirely separate from the regular school program. Teacher qualifications, termination and reemployment rights, supervision, the subjects taught, the students taught, work hours, wages, benefits and funding are all unique in the CETA program. On the basis of these substantial differences between the CETA instructors and the regular district teachers, we find that the CETA instructors do not share a community of interest with the regular teachers and therefore exclude them from the stipulated unit. Home Instructors

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Home instructors tutor ill students in the hospital or at home to keep them abreast of the work being performed in the classes the students would otherwise attend. Home instructors may work with the students' regular teachers to coordinate the home instruction with the classroom instruction. Home instructors; are supervised and evaluated by the school Principal, The 1975-76 high school Principal stated that there is no formal evaluation procedure for home instructors and he merely informally solicited information from those who worked with the home instructors. He said that evaluation actually occurs only where a problem arises.

The district employed six home instructors in the 1975-76 school year. The teachers on the home instruction list have expressed their willingness to work on an as-needed basis. Work is assigned to home instructors depending upon their subject specialization, the needs of the district, and the number of hours the instructor wishes to work. Like regular classroom teachers, home instructors hold a regular teaching credential. Additionally, they must have a "special fitness" to perform the duties of a home teacher according to Education Code Sections 13286 and 13287.

Home instructors do not enter into a written contract with the district even if assigned for an entire year. The district classifies them as substitute teachers. They do not receive fringe benefits and are paid on an hourly basis. If a regular teaching position in the district opens, home instructors are not given any preference for hiring. Two of the home instructors had been employed by the district in the previous two school years while four were new in 1975-76.

Like day-to-day and long-term substitutes, home instructors are called on an as-needed basis and they have no reemployment rights. Their working conditions and the terms of their employment have little in common with those of the regular teachers. We therefore conclude that the home instructors lack a community-of interest with the regular teachers and exclude them from the stipulated unit. The facts and result in this case are consistent with the Petaluma decision,

#### Adult School Teachers

There were approximately 20 adult school teachers in the 1975-76 school year. Most taught five or six hours per week. Approximately five of the 20 teachers were also employed by the district in the regular day program. The selection committee for adult school teachers consists of the Superintendent of the District, the Principal of the adult school, and adult school teachers. Adult school teachers who teach vocational subjects need possess only a designated subjects teaching credential which does not require a baccalaureate degree.<sup>11</sup>

The adult school program is on a quarter system while the regular school program is on a semester system. Adult school classes are conducted at a school site, generally in the evening.

Adult school teachers are not considered by the district to be part of the regular district staff. They are classified as substitutes called on an as-needed basis. They do not receive fringe benefits and they are paid on an hourly basis. Adult school teachers do not have a written employment contract.

If an insufficient number of students enrolls in a class, the class is cancelled. The class may even be cancelled three or four weeks into the quarter and the teacher dismissed if the enrollment drops.

Education Code Sections 13328 and 13309, dealing with tenure, provide a measure of job security for adult education teachers. Achievement of tenure by adult school teachers is separate from that for regular teachers provided in Education Code Section 13304. An employee cannot be tenured in both adult school and day school as a result of having served the required probationary period in each system. The employee must select between the two permanent classifications.<sup>12</sup>

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<sup>1</sup> "Education Code Sections 13128 and 13132,

<sup>12</sup>

Education Code Section 13311.

The foregoing facts indicate that the adult school program is entirely separate from the regular day school program. We therefore conclude that adult school teachers lack a community of interest with the regular teachers and exclude them from the stipulated unit. The facts and result in this case are consistent with the Petaluma decision.

#### Summer School Teachers

There were 63 summer school teachers in the 1976 summer program. Sixty of these were regular district teachers and three were hired from outside the district. These numbers reflect the district's efforts to staff the summer program first with regular district teachers.

The Director of Instruction Services is in charge of the summer school program and responsible for its staffing. The summer school staff is selected in April and its size depends upon student enrollment.

All summer school teachers are required to have a regular teaching credential. However, summer school teachers do not receive fringe benefits and are paid on an hourly basis.

The summer school classes are held at district school sites. The Principal is the primary evaluator of the summer school teachers at each school, but there is no formal evaluation.

According to Education Code Section 13332, a teacher cannot obtain tenure as a summer school teacher, and employment as a summer school teacher is not counted in computing whether a teacher is classified as a permanent employee of the district.

Because of the tenuous and short-term nature of the employment of summer school teachers and because of the separate nature of the summer school program, we find that the summer school teachers lack a community of interest with the regular teachers and therefore exclude them from the stipulated unit. The facts and result in this case are consistent with the Belmont and Petaluma decisions.

#### ORDER

The Educational Employment Relations Board directs that:

1. The following unit is appropriate for the purpose of meeting and negotiating, provided an employee organization becomes the exclusive representative:

All regular full-time teachers, all regular part-time teachers, lead teachers, counselors, psychologists, resource teachers, curriculum

specialists, media specialists, librarians, school nurses, speech and hearing specialists, substitutes on contract, middle school department heads, high school department heads and curriculum team members; but excluding Superintendent, Assistant Superintendent, district directors, district coordinators, principals, assistant principals, head counselor, day-to-day substitutes, interns, certificated Comprehensive Employment Training Act staff members, home instructors working more than 20 hours a week, adult school teachers, summer school teachers, and management, supervisory and confidential employees.

2. Within 10 workdays after the employer posts the Notice of Decision, the employee organizations may demonstrate to the Regional Director at least 30 percent support in the above units. The Regional Director shall conduct an election in each unit at the end of the posting period if (1) more than one employee organization qualifies for the ballot, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

/By: Raymond J. J^nzale's, Member

Regiria^l Alleyne, Chairman

Date: March 22, 1977

Jerilou H. Cossack, Member, concurring in part and dissenting in part:

I agree with my colleagues that department heads and curriculum team members are not supervisors within the meaning of Government Code Section 3540.1(m) and that they should, therefore, be included in the negotiating unit. I also agree that adult education and CETA instructors should be excluded from the negotiating unit since they do not possess a sufficient community of interest with those in the overall unit. I disagree with the majority, however, with respect to their exclusion of the classifications of interns, summer school teachers and home instructors.

#### Interns

The majority characterizes the employment relationship of interns as being "...merely incidental to their education." I find the characterization to be misleading, at best. In fact, there is little if any difference between the

interns in the instant case and other classifications whom we have held to be appropriately included in a certificated unit. In Belmont Elementary School District<sup>1</sup> we unanimously agreed that part-time teachers teaching less than 51 percent of a full-time assignment and temporary teachers should be included in the certificated unit; in Grossmont Union High School District<sup>2</sup> we unanimously agreed that temporary teachers should be included in the certificated unit. In the instant case, interns work on a contract for a semester or more, just as the temporary teachers in Belmont and Grossmont, performing every function and assuming every responsibility of a regular teacher not only for individual classes but also for extra duty assignments such as yard and hall duty. Similar to the part-time teachers included in the unit in Belmont, no intern teaches fewer than two-fifths of a full-time load; some interns teach a full-time load. Interns are evaluated by the principal, just as are regular teachers. They are paid on the first step of the teachers' salary schedule. Full-time interns receive fringe benefits. While the record is unclear about the extent to which interns are employed as regular teachers after their internship is completed, it is clear that at least some interns are so employed. In addition, time spent as an intern counts toward the achievement of tenure.

The majority's reliance on County of Erie,<sup>3</sup> a New York case dealing with the unit placement of medical interns, is inapposite. Unlike the instant case, medical interns there worked under different supervision with different work schedules and were required to serve at hospitals in order to obtain the desired license or certification. Their program was controlled and designed by regulatory bodies beyond the hospital administration. In fact, their only similarity with the interns in the instant case is the terminology.<sup>4</sup>

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<sup>1</sup>EERB Decision No. 7, December 30, 1976.

<sup>2</sup>EERB Decision No. 11, March 9, 1977.

<sup>3</sup>9 NY PERB 3029 (1976).

<sup>4</sup>See The Juilliard School, 208 NLRB 153, 85 LRRM 1129 (1974), in which "per diem" employees who worked only on a "need basis" were included in a unit of stage department employees employed at a nonprofit music, drama and dance school. See also Rensselaer Polytechnic Institute, 218 NLRB No. 220, 89 LRRM 1844 (1975), in which a university's terminal contract faculty members who had been notified that they would be terminated at the end of the contract period were included in a unit with other faculty. See also Echerd's Market, Inc., 183 NLRB 337, 74 LRRM 1319 (1970) in which two student employees were included in a unit of all retail store employees since they were temporary workers hired for a definite term.



Accordingly, I would include interns in the overall certificated unit.

Summer School Teachers

The majority's exclusion of the entire classification of summer school teachers is a travesty. At the hearing, the parties to this proceeding agreed that the unit would include summer school teachers who were also full-time and part-time teachers. The only summer school teachers about whom there was a dispute were those who were solely employed as summer school teachers. The majority has ignored the precedent established by this Board in Tamalpais Union High School District<sup>5</sup> and Pittsburg Unified School District<sup>6</sup> that we do not intend to look behind the stipulations of the parties unless such stipulations are clearly contrary to the provisions of the Act or clearly contravene the rights guaranteed by the Act. Yet without comment or acknowledging the parties' agreement, the majority blithely excludes the entire classification of summer school teachers. No post-hearing brief seeks to disregard the stipulation. The stipulation is not as to a matter of law, nor is it incompatible with the Act or any policy of this Board. Accordingly, we as well as the parties are bound by it.<sup>7</sup>

The majority's characterization of the status of summer school teachers as "tenuous and short-lived" is absurd, since 60 of the 63 summer school teachers are regular district teachers. The only result of specifically excluding the classification of summer school teachers from the negotiating unit is to foreclose negotiations about those matters within the scope of representation with respect to all summer school teachers in the event either the Association or the Federation is certified as the exclusive representative of the certificated unit. For the reasons set forth in Belmont, and Petaluma, I would include the classification of summer school teachers in the negotiating unit. I therefore find it unnecessary to determine whether some or all of those persons employed solely as summer school teachers are eligible to vote in the election.

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<sup>5</sup>EERB Decision No. 1, July 20, 1976.

<sup>6</sup>EERB Decision No. 4, November 23, 1976.

<sup>7</sup>See International Kitchens, 189 NLRB 79, 76 LRRM 1567 (1971); cf. Estate of Burson, 51 Cal. App. 3d 300, 306 (1975); People v. Southern Pacific Co., 208 Cal. App. 2d 745, 747-748 (1962); Barendregt v. Downing, 175 Cal. App. 2d 733, 736 (1959).

### Home Instructors

Finally, I take exception to the majority's exclusion of the classification of home instructors from the unit and would find here, as in Petaluma, that they share a sufficient community of interest with regular teachers to be included in the overall certificated unit. In the instant case, no party sought to include home instructors who taught less than 20 hours per week. Unlike the situation in ~~Lompoc Unified School District~~,<sup>8</sup> the home instructors sought to be included in the unit in the instant case are those whose employment relationship with the district is substantial. They are required to be credentialed; some home teachers are also regular teachers; and some persons are employed as home instructors year after year. Accordingly, I would include home instructors in the overall unit.

Je/ilou H. Cossack, Member

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<sup>8</sup>EERB Decision No. 13, March 17, 1977.