STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ANTIOCH UNIFIED SCHOOL DISTRICT, Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, ANTIOCH CHAPTER 85, Employee Organization, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2575, Employee Organization.	Case Nos. SF-R-146 SF-R-290 EERB Decision No. 37 November 7, 1977

Appearances: J. Michael Taggart, Attorney (Paterson & Taggart), for the Antioch Unified School District; William D. Dobson, Attorney, for California School Employees Association, Antioch Chapter 85; Hirsch Adell, Attorney (Reich, Adell & Crost), for American Federation of State, County and Municipal Employees, Local 2575.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION AND ORDER

This case is before the Educational Employment Relations Board on the exceptions of American Federation of State, County and Municipal Employees, Local 2575, to the attached proposed hearing officer's decision finding an operations-support services unit, including food services employees not requested by AFSCME, an appropriate unit. AFSCME excepts to the hearing officer's decision in that (1) the hearing officer incorrectly found that AFSCME failed to sustain its burden of proving that its proposed negotiating unit of custodial and maintenance employees has a community of interest separate and distinct from food services workers; (2) the hearing officer incorrectly found that the evidence does not support the placement of food services workers in a residual unit of office-clerical and technical personnel; and (3) the hearing officer incorrectly concluded that the statutory unit criterion on "the extent to which . . . employees

belong to the same employee organization does not affect the outcome in this matter."

The hearing officer's proposed decision is adopted as the decision of the Educational Employment Relations Board, as modified by the matters noted in this decision. The proposed order of the hearing officer is adopted as the order of the Educational Employment Relations Board.[1]

In the brief in support of its exceptions, AFSCME argues that "the task of the EERB is to rule on whether a sought unit is appropriate", and, correlatively, that "the [EERB] need not determine the ultimate unit or the most appropriate unit". Therefore, AFSCME concludes, the EERB should determine that AFSCME's request for a unit of custodians, groundsmen and gardeners, maintenance employees, bus drivers, warehousemen and storekeepers, excluding food services employees, should be deemed an appropriate unit, even though the requested unit plus the unrequested food services employees, might be a more appropriate unit.

AFSCME places heavy reliance upon Alameda County Assistant Public Defenders Association v. County of Alameda,[2] a California Court of Appeal decision stating that the unit criteria in the Meyers-Milias-Brown Act,[3] like the unit criteria in the National Labor Relations Act,[4] require a determination that a requested representation unit is an appropriate unit rather than the most appropriate unit. AFSCME did not expressly make this argument at the hearing or in its post-hearing brief to the hearing officer, whose proposed decision is for that reason understandably silent on the issue.

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[1] AFSCME's request for oral argument before the Board itself is denied.

[2] 33 CA. 3d 825, 109 Cal. Rptr. 392 (1973).

[3] Gov. Code Sec. 3500 et seq.

[4] 29 U.S.C. 151 at seq.

We conclude that the unit-determination criteria in Government Code Section 3545 require a weighing and balancing in respect to each other in order to achieve consistency of application and the general objectives of the Act.[5] For reasons to be noted, this balancing and weighing of the Act's unit-determination criteria preclude the Board from describing the methodology of unit determination with a narrow choice between the labels "an" and "most".

That the Legislature fully intended to provide the EERB with general guidelines and wide discretion in applying them is manifested by the presence of not one but three statutory unit criteria and the rather amorphous nature of each one. Government Code Section 3545 provides in part:

> (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.

The Legislature did not state how each of the enumerated criteria should be weighed in respect to the others. If given equal weight, they would tend to conflict with each other in some cases. This presents a difficult challenge for the EERB in considering the mass of detailed facts usually presented in unit determination cases. For example, the application of community of interest criteria, alone, might

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[5] The objectives of the Educational Employment Relations Act are stated in Gov. Code Sec. 3540, which provides in part:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy.

justify multiple units of a number in conflict with the requirement that excessive unit fragmentation not impair an employer's efficiency of operations. On the other hand, evidence on efficiency of operations, viewed alone, might favor decidedly fewer units than the number deemed appropriate if community of interest criteria are alone applied. Application of the criterion of the extent to which employees belong to the same employee organization, alone, or of efficiency of operations, alone, could produce units lacking in the requisite community of interest. These difficulties in avoiding internal inconsistency and conflict are compounded by the fact that the community of interest criterion itself contains a number of elements which the Board must weigh and balance in cases calling for their application.[6]

At present, unit-resolution problems are further compounded by the relative newness of the EERA and the real possibility that the passing of time and the accumulation of experience with structured units will prompt a shift in the assignment of EERA unit-criteria priorities. The Board is currently giving more weight to community of interest than it is to other EERA unit criteria.[7] We have decided, for example, that "[b]ecause of the unspecified and possibly unilateral nature of the unit designation procedure which existed in this district under the Winton Act, in determining appropriate negotiating units in

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[6]The EERA does not define community of interest, but the EERB follows the National Labor Relations Act definition fashioned by the National Labor Relations Board in Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962), in requiring consideration of differences in job qualifications, training and skill, wages, methods of compensation, hours of work, fringe benefits, supervision, frequency of contact with other employees, integration with work functions of other employees, and interchange with other employees. See Los Angeles Unified School District, EERB Decision No. 5, November 24, 1976; Lompoc Unified School District, EERB Decision No. 13, March 17, 1977.

[7]E.g., Fremont Unified School District, EERB Decision No. 6, December 16, 1976.

this case we give little weight to 'established practices' as they relate to the composition of the unit represented under the authority of that Act."[8] Another year from now, the criterion of established practices might well be given more weight than the EERB now gives community of interest, for once units are established under the EERA and negotiating commences with an exclusive representative, followed by a negotiated agreement covering employees in that unit, a new representation petition seeking a different unit might well be decided with a greater reliance on negotiating history under the Educational Employment Relations Act. The possibility of a stable negotiating relationship in a given unit is the very characteristic that the community-of-interest criterion is designed to measure.

Another shift in unit-criteria emphasis may take place with the passing of time. In the absence of statutory units predating the EERA, it is difficult now for school employers to offer convincing evidence that a requested unit or units will impair efficiency of operations, but current and future experience with multiple units may in some instances permit production of the required evidence.

We of course resolve none of these future cases at this time, nor do we suggest what time frames might cause the Board to shift its emphasis from one unit criterion to another or from one group of unit criteria to others. We cite these possibilities only to illustrate how the Legislature has necessarily allowed the Board flexibility in balancing and weighing the unit criteria contained in Government Code Section 3545, and why we must reject a strict application of either "an" appropriate unit or a "most" appropriate unit criterion as inconsistent with a fair and rational application of the unit criteria.

Viewing the EERA's literal unit criteria terms, we have no difficulty in rejecting a strict "most" appropriate unit standard, since the Act does not use the term "most" appropriate unit. The language of the Act does not strictly suggest the "an appropriate unit" standard. If the "an" standard were specified, it would logically

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[8] ~~Sweetwater Union High School District~~, EERB Decision No. 4, November 23, 1976. See ~~Fremont Unified School District~~, EERB Decision No. 6, December 16, 1976; ~~San Diego Unified School District~~, EERB Decision No. 8, February 18, 1977.

be found in Section 3545(a) or perhaps in Section 3541.3(b), quoted below.

Section 3545(a) provides:

> In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of . . .[9] [Emphasis added.]

Section 3545(a) does not provide:

> In each case, the board shall determine whether a unit is an appropriate unit on the basis of . . . [Emphasis added.]

Section 3541.3 provides in pertinent part:

> The board shall have all of the following powers and duties . . .
>
> (b) To determine in disputed cases, or otherwise approve, appropriate units. [Emphasis added.]

It does not provide:

> (b) To determine in disputed cases, or otherwise approve, an appropriate unit or units. [Emphasis added.]

In those sections of the Act where the words "an appropriate unit" do appear, the use of the word "an" is the result of the grammatical context. It is not a command of the Legislature to choose the standard of "an appropriate unit".[10]

Beginning with our threshold unit decision for classified employees, Sweetwater Union High School District,[11] and continuing thereafter with a line of cases similarly

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[9] The entire text of Gov. Code Sec. 3545(a) is quoted supra in the text.

[10] See, e.g., Gov. Code Sec. 3544.5(d), concerning the filing of representation petitions rather than the determination of appropriate units: "A petition may be filed with the board . . . by . . . . An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative . . . . [Emphasis added.] See generally Gov. Code Sec. 3544, 3544.1(b), 3544.3, 3544.5. Gov. Code Sec. 3546(a), on "organizational security", uses the words "the appropriate unit".

[11] EERB Decision No. 4, November 23, 1976.

decided,[12] the Board, in applying the unit criteria as described here, has determined that the two or three basic units found to be appropriate in those cases reflect a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units. Applying these principles to the facts in the present case and the matters excepted to, we conclude that the hearing officer correctly relied on prior EERB precedents and the facts established in this record to find the unit requested by AFSCME not appropriate without the inclusion of food services employees. AFSCME argues that our decision in Foothill-DeAnza Community College District[13] dictates a different result. We disagree.

In the Foothill-DeAnza case, food services employees were not included in a unit similar to the unit sought by AFSCME in this case, but only because no party sought their inclusion in the operations-support services unit found to be appropriate and no party argued that it would be inappropriate to include food services employees in a residual unit.[14] Here, in sharp contrast, the employer seeks to include food

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12 ~~Fremont Unified School District~~, EERB Decision No. 6, December 16, 1976; ~~San Diego Unified School District~~, EERB Decision No. 8, February 18, 1977; ~~Foothill-DeAnza Community College District~~, EERB Decision No. 10, March 1, 1977.

13 EERB Decision No. 10, March 1, 1977.

14 In ~~Foothill-DeAnza~~, California School Employees Association at all times argued in favor of a wall-to-wall unit. That position might be looked upon as creating a dispute on the issue of the placement of food services employees, since an argument in favor of a wall-to-wall unit appears to be inconsistent with an argument in favor of the exclusion of food services employees from a unit of maintenance and custodial employees. But a party seeking and failing to obtain a wall-to-wall unit must be presumed, in the absence of evidence to the contrary, to have no position on the issue of whether one classification of employees should be included or excluded from one of several multi-classification units.

services employees in an operations-support services unit and AFSCME seeks their exclusion from that unit. Thus, in this case, the placement of food services employees in or out of the operations-support services unit is a disputed issue requiring resolution by this Board; the absence of a similar dispute in Foothill-DeAnza only required that the EERB accept the agreed-upon placement of food services employees so long as that disposition was "not inconsistent with a clear and specific mandate in the unit-criteria provisions" of the EERA.[15]

AFSCME also places heavy reliance upon Alameda County Assistant Public Defenders Association v. County of Alameda.[16] In that case, the Court of Appeal rejected an employer's contention that a proposed unit of public defenders should be merged with an overall unit of all other professional employees in the county. In addition to basing its decision on the rejection of a "most" appropriate unit standard and its reliance on the "an" appropriate unit criterion, as specifically found in the Meyers-Milias-Brown Act,[17] which governed the case, the Court also stated that the public defenders had no community of interest with other professional employees in the county. Specifically, the Court held:

> Certainly attorneys have a distinct function from librarians, planners, etc. Public defenders have separate supervision, place of work and hiring procedures. There is very little if any interchange between public defenders and the other professions

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[15] See Tamalpais Union High School District, EERB Decision No. 1, July 20, 1976.

[16] 33 CA. 3d 825, 109 Cal. Rptr. 392 (1973).

[17] Gov. Code Sec. 3507(d) provides:

> Such rules and regulations [by a public agency] may include provisions for *** (d) exclusive recognition or employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof . . .

> grouped together in [the unit proposed by the County].
>
> It does seem incongruous that assistant public defenders should be grouped in a bargaining unit with auditors, planners, rodent and weed inspectors. The attorneys in the public defender's office are sui generis, having little community of interest with the other professional groups which [the County] tries to place in one organization[18]. 8

Thus, the Court placed as much, if not more, reliance on the absence of a community of interest between attorneys in the public defenders office and the other county professional employees, as it did on the "an" appropriate unit requirement. In any event, in respect to "an" and "most", the Meyers-Milias-Brown Act differs materially from the Educational Employment Relations Act. The Meyers-Milias-Brown Act contains no unit criteria defining "an appropriate unit". It does provide:

> A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under this chapter.[19]

With only the use of the word "reasonable" to serve as a standard for unit determination cases, the Court in Alameda County Assistant Public Defenders Association relied on National Labor Relations Act precedents in determining that the "an" standard in Government Code Section 3507(d) should be literally applied.[20] We must therefore compare EERB unit criteria with National Labor Relations Act unit criteria.

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[18] 33 CA. 3d at 831-832.

[19] Gov. Code Sec. 3507.

[20] The Court relied principally upon the NLRB's decision in ~~Douglas Aircraft Co.~~, 157 NLRB 69, 61 LRRM 1434 (1966) for its finding that the County public defenders lacked a community of interest with employees in the overall unit. In determining that the National Labor Relations Act "requires only that a unit 'be appropriate'", and that the NLRB "need not determine the ~~ultimate~~ unit or the ~~most~~ appropriate unit", the Court cited ~~Morand Bros. Beverage Co.~~, 91 NLRB 58, 26 LRRM 1501 (1950) enforced (7th Cir. 1951), 190 F. 2d 576; ~~Federal Electric Corp~~., 157 NLRB 89, 61 LRRM 1500 (1966); ~~F.W. Woolworth Co.~~, 144 NLRB 35, 54 LRRM 1043 (1963). See 33 CA. 3d at 830-831.

National Labor Relations Act unit criteria contained in the NLRA differ from the unit criteria contained in the Educational Employment Relations Act. NLRA unit criteria are set out in NLRA Section 9(b), which provides:

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, employees other than guards.

Examining Section 9(b) of the NLRA, it is evident that the general affirmative criteria comparable to the general affirmative criteria contained in Government Code Section 3545(a) are the first few lines before the proviso. The proviso contains several specific negative commands, just as Government Code Section 3545(b) contains several specific negative commands, but they have no bearing on the questions involved here.

Examining the portion of National Labor Relations Act Section 9(b) that is pertinent in this case and comparing that aspect of Section 9(b) with the relevant criteria in the EERA, the differences between the two criteria become readily apparent. The NLRA statutory criteria do not include an efficiency of operations test, a community of interest test or an established practices test. It is

true that in respect to community of interest and established practices (to the extent that this means past bargaining history), the NLRB, through its decisions, has fashioned the community of interest standard already noted in this decision as having been relied upon by this Board.[21] The NLRB's Kalamazoo decision also demonstrates that while the National Labor Relations Act is silent on the criterion of past bargaining history, the NLRB considers it a unit criterion.[22] However, in respect to the EERA criterion of efficiency of operations, not only is the National Labor Relations Act silent, but the NLRB does not generally apply that criterion in unit cases. In contrast, the California Legislature has commanded that the EERB use that criterion in all unit cases. The silence of Congress on past bargaining history and community of interest gives the NLRB more leeway to fashion and apply unit criteria than the California Legislature, with mandated unit criteria, has given the EERB.

While it has no direct bearing on the "an" versus "most" issue, we also note that Alameda County Assistant Public Defenders Association is a case in which a party sought to represent the public defenders in a separate unit; here, no party seeks to represent food services employees as a separate unit consisting of food services employees alone. Therefore, this Board has even more leeway to decide here that food services employees should become part of the unit proposed by AFSCME.

For all of the reasons noted, we feel bound to weigh and balance the EERA unit criteria mandated by the Legislature in the manner described in this decision rather than be limited by a rigid "an" or "most" appropriate unit standard.

Reginald Alleyne, Chairman Raymond J. Gonzales, Member Jerilou H. Cossack, Member, concurring:

I agree with the result reached by the majority opinion in this case, but I disagree with the distinctions it makes regarding our decisions in Sweetwater

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[21] See Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

[22] Ibid.

Union High School District[1] and Foothill-DeAnza Community College District.[2] The majority claims that this case is more like Sweetwater than Foothill-DeAnza. Upon re-examination of both, I believe that the outcome in Foothill-DeAnza is in fact inconsistent with our earlier ruling in Sweetwater.

The distinctions drawn by the majority in the instant case are without differences. Against AFSCME's argument that Foothill-DeAnza should serve as precedent to exclude food services employees from the operations-support unit, the majority justifies the inclusion of these employees by noting that the District here has requested it. The majority notes further that in Foothill-DeAnza, no one requested representation of the food services employees alone. Because of this distinction, my colleagues see reason not to apply Foothill-DeAnza to the facts of this case. I contend that their approach is disingenuous.

This case ultimately involves a clarification of the result reached by us in Foothill-DeAnza. In Sweetwater, this Board determined that three units are presumptively appropriate for classified employees. There SEIU had asked for a custodial-gardening unit, and CSEA, for a wall-to-wall unit. No one asked to represent food services employees alone. The appropriate unit was determined to be an operations-support unit which included food services employees on community of interest grounds. In Foothill-DeAnza, SEIU asked for a skilled trades and crafts unit while the district and CSEA wanted a wall-to-wall unit. As in Sweetwater, no one in Foothill-DeAnza asked to represent the cafeteria employees alone. However, in contrast to Sweetwater, we held in Foothill-DeAnza that the skilled crafts and maintenance unit was appropriate without the food services employees. They were instead placed in a residual unit with all remaining classified employees on the rationale that no party had asked to represent just them. Simply put, we misapplied the presumption established in Sweetwater, and the result reached in Foothill-DeAnza was wrong. The majority here compounds the error by attempting to find distinctions where none exist. This can only serve to further confuse the parties before us.

Jerilou H. Cossack, Member

[1]EERB Decision No. 4, November 23, 1976.

[2]EERB Decision No. 10, March 1, 1977.

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the natter of:	)	
	)	
ANTIOCH UNIFIED SCHOOL DISTRICT,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Antioch Chapter No. 85,	)	Case Nos. SF-R-146 SF-R-290
	)	
Employee Organization,	)	
	)	
and	)	
	)	
UNITED PUBLIC EMPLOYEES, Local 2575, AFSCME,	)	PROPOSED DECISION (5/2/77)
Employee Organization.	)	
	)	

Appearances: Paterson & Taggart, by J. Michael Taggart, for the Antioch Unified School District.

William D. Dobson for California School Employees Association, Antioch Chapter No. 85.

Reich, Adell & Crost, by Hirsch Adell, for United Public Employees, Local 2575, AFSCME.

Before Barbara Stuart, Hearing Officer.

PROCEDURAL HISTORY, BACKGROUND AND JURISDICTION

On April 1, 1976, California School Employees Association, Antioch Chapter No. 85 (hereinafter "CSEA") filed with the Antioch Unified School District (hereinafter "District") a request for recognition as the exclusive representative of a unit of all classified employees[1]

[1]CSEA's unit included but was not limited to the following groupings: food service, secretarial/clerical, operations and maintenance (including custodial, maintenance, and grounds) : instructional aides (paraorofessionals) and transportation.

excluding noon duty supervisors, and management, supervisory and confidential employees.

On April 21, 1976, United Public Employees, Local 2575, AFSCME (hereinafter "AFSCME") filed with the District a request for recognition as the exclusive representative of a unit consisting of the following classifications: custodial leadman, custodians, custodians S.S.B., head custodians I, II, and III, matrons, head groundsman, groundsman, gardener, general maintenance man, maintenance craftsman, maintenance helper, warehouseman/driver, bus drivers, storekeepers, and equipment mechanic.

On May 17, 1976, the District filed with EERB its Employer Decision in which it questioned the appropriateness of the unit requested by AFSCME. A unit determination hearing was conducted by an Educational Employment Relations Board hearing officer on September 13, 1976.

The Antioch Unified School District of Contra Costa has an average daily attendance of approximately 9,029 in 8 elementary schools, two junior high schools, one high school and one adult school.[2] The District employs approximately 300 classified employees under a merit system.[3]

The District is an employer within the meaning of Section 3540.1 (k) of the Act. At the hearing, the parties stipulated that CSEA and AFSCME are employee organizations within the meaning of Section 3540.1 (d) of the Act.

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2 Official notice is taken of these facts from the "California Public School Directory," Cal. State Dept. of Education (1976) at 67.

3 Education Code Sections 13701 et seq., recodified as Sections 45240 et seq, effective 4/30/77.

At the hearing, the parties also stipulated that there are no issues regarding management, supervisory or confidential employees.

AFSCME consistently has maintained that the unit for which it petitioned (termed "skilled trades and maintenance" in its post-hearing brief) is appropriate for bargaining. Through the hearing, CSEA and the District maintained that the "wall-to-wall" unit of classified employees requested by CSEA was appropriate. In its post-hearing brief, however, the District takes the position, pursuant to the Board's decisions in Sweetwater Union High School District[4] and Fremont Unified School District,[5] that two units are appropriate: an operations-support services unit (consisting of the unit proposed by AFSCME with the addition of food services personnel and the security aide), and an office-technical unit consisting of the remaining classifications (including instructional aides). CSEA waived filing a post-hearing brief.

ISSUE

What classified employee unit or Units are appropriate in this case for negotiations under the Act?

DISCUSSION

A. The Appropriate Classified Units

In its post-hearing brief, AFSCME primarily relies on the Board's Foothill-DeAnza Community College District decision[6] in support of its

[4]EERB Decision No. 4, 11/23/76.

[5]EERB Decision No. 6, 12/16/76.

[6]EERB Decision No. 10, 3/1/77.

requested "skilled trades and maintenance" unit. In Foothill-DeAnza, the Board found appropriate a "skilled crafts and maintenance" unit similar to the "skilled trades and maintenance" unit requested by AFSCME in the present case. Essentially, both these units are similar to the "operations-support services" unit found to be "presumptively appropriate" in the Sweetwater and Fremont decisions,[7] except for the exclusion of food services workers[8] from these units. In Foothill-DeAnza, the Board held that a party may show that a unit which deviates from a presumptively appropriate unit is also appropriate. In that case the employee organization demonstrated a separate community of interest among employees in the "skilled crafts and maintenance" unit and no party presented evidence to show that the smaller unit was inappropriate without the inclusion of food services workers. The Board also found the residual unit which included food services workers appropriate in the absence of any contrary evidence.

The factors favoring a separate community of interest among the employees of the proposed unit are as follows:

a. The employees in AFSCME's proposed unit are functionally related in that they work primarily with their hands and with tools in various forms of manual labor.

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[7] Supra, footnotes 4 and 5.

[8] In this case, the food services classifications in issue are: cook (11); food services assistant I and II (20); cook manager I, II, and III (9); and cashier (8).

[9] See footnotes 4 and 5, supra.

b. Most of the classifications in AFSCME's proposed unit require an eighth grade education or its equivalent.[10] In contrast, office, clerical and technical classifications generally require a twelfth grade education.

c. All but one of the classifications in AFSCME's proposed unit are supervised by the director of maintenance and operations who in turn reports to the business manager. The warehouseman/driver and storekeeper are supervised by the director of purchasing who also reports to the business manager-

d. There have been no transfers or promotions between the classifications in AFSCME's proposed unit and office, clerical and technical classifications. However, because pay scales and required skills are similar, lateral transfers have taken place and are more likely to occur among the classifications in AFSCME's proposed unit than between that proposed unit and office, clerical and technical classifications.

e. In terms of work location, maintenance personnel, bus drivers, equipment mechanics, the warehouseman/driver and storekeeper work out of the maintenance yard, garage or warehouse, all of which share the same geographic location. Custodial and presumably grounds personnel work at the District's various building sites.

With respect to past practices, during the past 6 or 7 years in which AFSCME has been active in the District, it has represented only employees in the classifications of its proposed unit. About half of the approximately 90 employees in the proposed unit were AFSCME members

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[10] Bus drivers are required to have a tenth grade education and the storekeeper is required to have a twelfth grade education but may substitute experience on a year-for-year basis.

at the time of the hearing.[11]

In the present case, however, unlike Foothill-DeAnza, AFSCME has not demonstrated that its proposed "skilled trades & maintenance" unit has a separate and distinct[12] community of interest substantially distinguishing its members from food services workers so as to justify the exclusion of the latter from the proposed unit. Unlike ~~Foothill-DeAnza~~, there is ample evidence in this record showing that food services workers share a community of interest with the classifications in AFSCME's proposed unit and conversely, are substantially distinguishable from the remaining classifications in the residual unit.

Food service workers are functionally related to the classifications in AFSCME's proposed unit in that they provide "support services" for students consisting of preparation, serving and clean-up of meals,[13] as well as cleaning their kitchens and equipment.

Like most of the classifications in AFSCME's proposed unit, most food service classifications require an eighth grade education or its equivalent. The positions of crook manager I, II & III require a twelfth grade education but experience may be substituted on a year-for-year basis in the same manner as for the storekeeper in AFSCME's proposed unit. By contrast, the remaining classifications in the residual unit generally require a twelfth grade education or its equivalent, with no experience substitution allowed.

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[11]AFSCME never has entered into a memorandum of understanding with the District under the Winton Act (repealed Education Code Secs. 13080 et seq.) on behalf of any District employees, while CSEA represented and reached agreement with the District during the past school year on behalf of all classified employees.

[12]See Sweetwater, supra, at 8-9; Fremont, supra, at 7; San Diego Unified School District, EERB Decision No. 8, 2/18/77, at 6-7.

[13]~~Sweetwater~~, ~~supra~~, at 9; ~~Fremont~~, ~~supra~~, at 5.

Food services workers are supervised by the director of food services who is parallel in authority to the director of maintenance and operations and director of purchasing, all of whom report to the business manager.[14] Most office, clerical and technical employees have different lines of supervision.

Food services workers work in cafeterias at each of the District's 9 regular school sites. They have frequent contact with custodial personnel who assist food services workers with strenuous tasks such as lifting heavy bags of sugar or flour. Custodians also are assigned to the cafeterias during the lunch hours:

> ...[t]o stand by, to assist in anyway they can, and in serving of the meals that the kids eat, you know, spills and anything they get called upon to do, ...[l]ike setting up benches....[15]

If a custodian is not present in the cafeteria, a food services wor will contact a custodian to take care of mopping and cleaning up spills in the cafeteria. Food services workers also have frequent contact with maintenance personnel who daily perform repair work on cafeteria equipment at one of the District's locations.

Accordingly, upon review of the entire record in this matter, it is the hearing officer's opinion that AFSCME has not sustained its burden of proving that its proposed "skilled trades and maintenance" unit has a separate and distinct community of interest justifying exclusion of food

[14] Sweetwater, supra, at 10; Fremont, supra, at 5-6.

[15] Transcript, at 63:17-19, 21 – testimony of the custodial foreman.

services workers therefrom. Similarly, the evidence does not support addition of food services workers to a residual unit consisting largely of office, clerical and technical personnel. Therefore, it is the hearing officer's decision that an "operations-support services" unit is presumptively appropriate in this case, to include all the classifications in AFSCME's proposed "skilled trades and maintenance" unit[16] plus all food services worker classifications.[17]17

Since no party presented evidence that it would be inappropriate, the remaining classified employees in the District, except for the positions of garage utilityman, head groundsman II, library assistant I and security aide,[18] and those designated management, supervisory, or confidential by the District, are found to comprise an appropriate second negotiating unit.[19] Instructional aides are included in this second unit because no party presented any evidence that it would be inappropriate to do so. Moreover, the District's job description for instructional aides indicates that a twelfth grade education or equivalent is required, the same as other classifications in the unit. The job description also indicates some functional relationship between instructional aides and the other classifications in the unit in that instructional aides (with the exception of those in the bi-lingual program) are required to perform clerical work, do arithmetic computations and type at a speed of 40 words per minute.

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[16]See p. 2, ante.

[17]Supra, footnote 8

[18]See p. 9, infra.

[19]Foothill-DeAnza, supra, at 4.

The positions of garage utilityman, head groundsman II, library assistant I and security aide are not included in either unit because from the District's classified employee list by job description, it appears that these positions are unoccupied. There was no evidence as to whether these positions were to have been filled or will be filled in the future, or as to the required duties and lines of supervision (except for the job descriptions). Thus, there is insufficient evidence to decide their proper unit placement at this time. If one or more of these positions is subsequently filled, their proper unit placement may be decided by stipulation of the parties or by a petition for unit clarification under EERB Regulation 33260.

B. Other Criteria

In addition to consideration of the criterion of community of interest in deciding the appropriateness of negotiating units, Government Code Section 3545 (a) also requires consideration of:

> ... established practices including, among other things, the extent to which...employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

Consideration of these two criteria does not affect the outcome in this matter. With respect to past representation history, it already has been indicated that about half of AFSCME's proposed unit are AFSCME members,[20] but that last year CSEA entered into a memorandum of understanding with the District on behalf of all classified employees.[21] In addition, CSEA has represented all classifications, including those in AFSCME's proposed

[20] The record indicates that there may be some dual CSEA-AFSCME memberships, and also that CSEA has approximately the same number of members as AFSCME in the latter's proposed unit.

[21] See p. 5, ~~ante~~.

unit, in grievance proceedings. Thus, the evidence on past representation history is inconclusive.

With respect to efficiency of operations, the only evidence is testimony from the District's Business Manager to the effect that it would be more efficient to negotiate with only one, rather than two units, although the business manager also testified that the District already has been negotiating with both CSEA and AFSCME in past years. Thus, the testimony with respect to efficient operation is insufficient to change the outcome of this decision.

PROPOSED DECISION

It is the proposed decision that the following classified employee units are appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit A - An operations-support services unit, including custodial leadman, custodians, custodian S.S.B., head custodians I, II, and III, matrons, head groundsman, groundsman, gardener, general maintenance man, maintenance craftsman, maintenance helper, warehouseman/driver, bus drivers, storekeeper, equipment mechanic, cook, food services assistant I and II, cook manager I, II and III, and cashier, excluding all other employees and management, supervisory and confidential employees.

Unit B - All classified employees not included in Unit A, excluding all employees in Unit A, noon-duty supervisors, garage utilityman, head groundsman II, library assistant I, security aide, and management, supervisory and confidential employees.

The parties have seven calendar days from receipt of this proposed decision in which to file exceptions in accordance with Section 33380 of the Rules and Regulations. If no party files timely exceptions, this proposed decision will become the final order of the Board on May 14, 1977, and a Notice of Decision will issue from the Board.

Within ten workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the Regional Director at least 30 percent support in the above units. The Regional Director shall conduct an election 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.

The date used to establish the number of employees in the above units 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 units.

Dated: May 2, 1977

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

By _____
Gerald A. Becker, Board Agent