

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

CARLSBAD UNIFIED SCHOOL DISTRICT,

Employer,

and

CARLSBAD UNIFIED TEACHERS ASSOCIATION/
CTA/NEA, Chapter 160,

Employee Organization,

and

OCEANSIDE-CARLSBAD FEDERATION OF
TEACHERS/AFT, Local 1344,

Employee Organization,

and

CARLSBAD CERTIFICATED SUPERVISORY
ASSOCIATION,

Employee Organization.

Case Nos. LA-R-107
LA-R-784

EERB Decision No. 41

November 29, 1977

Appearances: Glen Whitener for Carlsbad Unified School District; William Morgan for Carlsbad Unified Teachers Association; Raoul Teilhet for Oceanside-Carlsbad Federation of Teachers; Joseph Deminicanian for Carlsbad Certificated Supervisory Association.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

This case comes before the Educational Employment Relations Board on appeal from a hearing officer's decision that the certificated coordinators¹ employed in the Carlsbad Unified School District (hereinafter District) are not supervisory employees within the meaning of Government Code Section 3540.1(m) of the Educational Employment Relations Act (hereinafter EERA or Act). That section reads:

"Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall,

¹At issue herein are the vocational/career coordinator, athletic coordinator, ASB coordinator, counselor coordinator, academic coordinator, bilingual coordinator and general coordinator positions.

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.

The appealing party, the District, takes exception to the hearing officer's decision on the grounds that the evidence produced at the hearing established that the coordinators of the District "... (a) hire, (b) assign, (c) discipline other employees, and (d) assign work to and direct other employees."² We agree with the District that the hearing officer erred in not finding the coordinators to be supervisory employees within the meaning of the above-stated definition.

Section 3540.1(k) is to be read in the disjunctive; the possession of any one of the enumerated functions listed in this section or the effective power to recommend such action, if requiring independent judgment, is sufficient to make one a supervisor.³ Accordingly, while the evidence provides several bases for finding the coordinators to be supervisors, i.e., that they independently and effectively evaluate and discipline the teachers, for the sake of brevity, we limit our examination of the evidence to that which pertains to the authority of the coordinators to effectively make assignments.

The coordinators, unlike the department heads in New Haven Unified School District,⁴ do not simply coordinate teacher requests for assignment.

²The District also excepted to the hearing officer's conclusion that an oral amendment by the Carlsbad Unified Teachers Association at the hearing regarding its unit description put it in conformity with the unit description offered by the Oceanside-Carlsbad Federation of Teachers. However, in correspondence submitted to this Board by all the parties in this case, subsequent to the time the District filed its exceptions, a stipulation has been reached as to the unit description for the certificated personnel in the District so as to moot the District's exception on this point.

³See Sweetwater Union High School District, EERB Decision No. 4 (November 23, 1976) and San Diego Unified School District, EERB Decision No. 8 (February 8, 1977) following federal precedent set forth in Ohio Power and Light Company v. NLRB, 176 F.2d 385, 23 LRRM 1242 (C.A. 6, 1949), cert. denied, 388 U.S. 899.

⁴EERB Decision No. 14 (March 17, 1977).

They have individual responsibility for making curriculum assignments. Further, coordinators have the authority to change the assignments. The principal is eventually informed of such assignments and his or her input may be sought. However, it appears from the record that the principal's role in the area of assignments is really pro forma and that responsibility in this area actually lies with the coordinators.

In addition to having the authority to make curriculum assignments, the coordinators assign various extra-curricular activities. For example, the ASB (Associated Student Body) coordinator assigns personnel to supervise social activities such as school dances and the athletic coordinator makes coaching assignments. Evidence offered for purposes of establishing the effectiveness of such assignments was limited to the coaching assignments. It indicated that the Board of Education has ultimately approved such assignments with no known instance of having overturned the coordinator's decision.

The foregoing evidence persuades us that the coordinators in this case are indeed supervisory employees within the meaning of Government Code Section 3540.1(m). The decision of the hearing officer is therefore reversed.

ORDER

The following are "supervisory employees" within the meaning of Section 3540.1(m): vocational/career coordinator, athletic coordinator, ASB coordinator, counselor coordinator, academic coordinator, bilingual coordinator, general coordinator.

By: Raymond J. Gonzales, Member

Reginald Alleyne, Chairman

Jerilou H. Cossack, Member, concurring:

I agree with the majority that the coordinators here are supervisors. However, unlike the majority, I base the conclusion on their ability to effectively recommend the hire, discharge and discipline of employees as well as their authority to effectively recommend the assignment of employees.

Unlike the subject coordinators in Lompoc Unified School District,¹ the coordinators in the instant case effectively recommend the hire of employees. They are part of a committee which includes no persons in the negotiating unit but, rather, is composed of the principal, a district representative, usually the director of personnel, and a coordinator. The committee's recommendations go directly to the governing board and appear to be uniformly followed. In addition, the coordinators prepare written evaluations of both probationary and tenured employees. These evaluations are the primary basis upon which a decision is made regarding retention of probationary employees. Finally, the written evaluations by coordinators of tenured employees provide the basis for initiating disciplinary action. Accordingly, I find the coordinators to be supervisors within the meaning of the EERA.

Jérilou H. Cossack, Member

¹EERB Decision No. 13, March 17, 1977.

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:)	
)	
CARLSBAD UNIFIED SCHOOL DISTRICT)	
)	
Employer,)	
and)	
)	Case Nos. LA-R-107
CARLSBAD UNIFIED TEACHERS ASSOCIATION/ CTA/NEA, Chapter 160,)	LA-R-784
)	
Employee Organization,)	
and)	
)	
OCEANSIDE-CARLSBAD FEDERATION OF TEACHERS/AFT, Local 1344,)	<u>PROPOSED DECISION</u>
)	
Employee Organization,)	(5/20/77)
and)	
)	
CARLSBAD CERTIFICATED SUPERVISORY ASSOCIATION,)	
)	
Employee Organization.)	

Appearances: Glen Whitener for Carlsbad Unified School District;
William Morgan for Carlsbad Unified Teachers Association; Raoul Teilhet
for Oceanside-Carlsbad Federation of Teachers; Joseph Deminicanian
for Carlsbad Certificated Supervisory Association.

Before Jeff Paule, Hearing Officer.

PROCEDURAL HISTORY

On April 1, 1976, the Carlsbad Unified Teachers Association filed its request for recognition with the Carlsbad Unified School District, seeking recognition of a certificated employee unit consisting of certain specified regular full and part-time certificated employees of the district and specifically excluding therefrom coordinators and certain other positions.

On April 28, 1976, the Oceanside-Carlsbad Federation of Teachers filed an intervention seeking recognition of a certificated employee unit, excepting therefrom coordinators teaching less than two classes and certain other positions.

On April 29, 1976, the Carlsbad Unified Teachers Association filed an amendment to its earlier request for recognition, modifying the unit description to include certain positions not herein in issue.

On May 28, 1976, the Carlsbad Unified School District requested a unit determination hearing by the Educational Employment Relations Board.

On January 18, 1977, the Carlsbad Certificated Supervisory Association filed its request for recognition seeking recognition of a supervisory unit consisting of nine certificated coordinators.

On March 21, 1977, a formal unit determination hearing was held, at which time the Carlsbad Unified Teachers Association orally amended its request for recognition so that its unit description is identical to that of the Oceanside-Carlsbad Federation of Teachers.^{1/} There was no objection to this amendment.

^{1/} The unit description contained in Oceanside-Carlsbad Federation of Teachers' intervention is as follows: INCLUDE elementary and secondary classroom teachers, special education teachers (deaf and hard of hearing, E.H., speech, E.M.R., aphasic, L.D.G., language development, reading, continuation school), teacher coordinators with two or more classroom teaching assignments, resource teachers, nurses, psychologists, psychometrists, counselors, music teachers, librarians; ECE consultants, inter-session and teachers on leave of absence. EXCLUDE superintendent, assistant superintendent, directors of pupil personnel, certificated personnel and curriculum, principals, assistant principals, vice principals, coordinators teaching less than two classes and day-to-day substitutes.

ISSUE

Whether the certificated coordinators are supervisory employees.

FINDINGS OF FACT AND DISCUSSION

The evidence with respect to the coordinators is essentially the same and therefore, the discussion and conclusions which follow apply to all coordinators.^{2/}

Government Code Section 3540.1(m) states:

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

As stated in Sweetwater Union High School District, EERB Decision No. 4 (November 23, 1976), "[t]his section of the Act is written in the disjunctive; therefore, an employee need not possess all of the enumerated functions or duties to be a supervisor. The performance of any one of the enumerated actions or the effective power to recommend such action is sufficient to make one a supervisor within the meaning of the Act." (Citation omitted.)^{3/}

The employer in the present case describes various instances in which the coordinators were involved in hiring, disciplining and directing other employees and in assigning work to other employees. However, there

^{2/} Coordinator of instructional materials, vocational/career coordinator, athletic coordinator, ASB coordinator, counselor coordinator, academic coordinator, bilingual coordinator, general coordinator and project coordinator.

^{3/} See also San Diego Unified School District, EERB Decision No. 8 (February 18, 1977).

is a distinction to be made in the degree, nature and quantum of the authority and responsibility given the coordinators with respect to these responsibilities. Such a distinction was made apparent in two recent Board decisions, Lompoc Unified School District, EERB Decision No. 13, (March 17, 1977), where the Board found part-time subject coordinators not to be supervisors, and New Haven Unified School District, EERB Decision No. 14 (March 22, 1977), where the Board found high school department heads not to be supervisors. As will be shown, the positions discussed in Lompoc and New Haven do not differ very extensively from, and in fact are very similar to, the coordinators in Carlsbad.

The record indicates that the coordinator positions became effective July 1, 1976. Prior to this time, there existed in the Carlsbad Unified School District the position of department chairman. The position of coordinator encompasses the responsibilities of the department chairman, adding very little additional authority. Although the coordinators may direct curriculum development, make recommendations and make assignments within their department, nevertheless, as in New Haven, the primary responsibility and assignment of the coordinators is as classroom teachers. Indeed, the record indicates that most of the coordinators teach at least one-half of their working day.

The coordinators are on a separate salary schedule which provides for additional compensation. In New Haven, however, the department heads also received additional monetary compensation and the Board did not consider this to be very persuasive evidence of supervisory status. Both the New Haven department heads and the Carlsbad coordinators need not possess a specialized credential.

The employer argues that the coordinators' authority to hire is equivalent to the responsibility possessed by the head custodian in Sweetwater, supra. In Sweetwater, however, the assistant superintendent conducted the initial interview; thereafter, the applicant talked with the head custodian, who then gave his recommendation to the principal. The principal in Sweetwater stated that he "placed considerable amount of weight in the head custodian's opinion" and usually followed his advice 99 percent of the time. In the present case, the coordinator, like the department chairman in New Haven, was merely part of an interviewing committee, and therefore did not make an "independent" recommendation.

With respect to the coordinator's authority to "assign", the only evidence presented was the assignment of various "extracurricular activities". Dr. Douglas Deason, a witness called by the school district, stated that the primary function of the coordinators was the responsibility of placing people in departmental assignments. The employer compares this with area cafeteria managers (San Diego Unified School District, EERB Decision No. 8 [February 18, 1977]), who assign and direct the work of cafeteria workers, head gardeners (San Diego), who develop work schedules for their crews, and head custodians (Sweetwater), who allocate regular work assignments of the custodians. The Carlsbad coordinators are more akin to department heads in New Haven, however, than to custodians or gardeners. In New Haven, the Board characterized "coordinating the request of teachers for the assignment of classes and classrooms" as a routine administrative matter.

The school district also argues that the coordinators possess the authority to discipline. The evidence indicates to the contrary; that the coordinators do not have the authority to suspend, lay off, discharge, dismiss or terminate employees. A witness for the employer did indicate that a coordinator has the authority to call a teacher "to an accounting" for any alleged misconduct. "Accountability", however, is not the type of discipline the Board has found to be indicative of supervisory status.

On the basis of the evidence presented and in view of recent decisions by the Board, it is concluded that the activities and functions of the Carlsbad Unified School District coordinators "are merely [that of] more experienced teachers giving advice and assistance to those less knowledgeable" New Haven, supra, and accordingly, are not supervisors within the meaning of the Act.

Inasmuch as the Carlsbad Unified Teachers Association and the Oceanside-Carlsbad Federation of Teachers request a unit that includes only those coordinators who teach two or more classes, it is necessary to ascertain which coordinators teach the requisite two or more classes. Based on the evidence, it is found that all but the Coordinator of Instructional Material and Project Coordinator teach two or more classes,^{4/} and accordingly, these

^{4/} The counselor coordinator does not teach, but counsels for one-half day. Inasmuch as counselors are included in the unit without objection by the employer, no distinction is made between counseling and teaching. This also applies to the bilingual coordinator, who teaches one class but counsels for three additional periods.

two positions as excluded from the unit proposed by the Carlsbad Unified Teachers Association and Oceanside-Carlsbad Federation of Teachers on this basis.

CARLSBAD CERTIFICATED SUPERVISORY
ASSOCIATION'S PETITION

The petition by the Carlsbad Certificated Supervisory Association requests recognition of a unit consisting of nine certificated coordinators. Since Carlsbad Certificated Supervisory Association is an organization seeking to represent a unit of supervisory employees, the petition shall be dismissed.

PROPOSED DECISION

It is the proposed decision that:

1. A certificated employee unit consisting of all elementary and secondary classroom teachers, special education teachers (deaf and hard of hearing, E.H., speech, E.M.R., aphasic, L.D.G., language development, reading, continuation school), resource teachers, nurses, psychologists, psychometrists, counselors, music teachers, librarians, ECE consultants, intersession and teachers on leave of absence and excluding superintendent, assistant superintendent, directors of pupil personnel, certificated personnel and curriculum, principals, assistnat principals, vice principals, coordinators teaching less than two classes (coordinator of instructional materials and project coordinator), and day-to-day substitutes is stipulated by all parties to be appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative of the unit.
2. Coordinators with two or more classroom teaching assignments, vocational/career coordinator, athletic coordinator, ASB coordinator, counselor coordinator, academic coordinator,

bilingual coordinator, general coordinator are not supervisory employees pursuant to Section 3540.1(m) and shall be appropriately included with the certificated employee unit.

3. The Regional Director is requested to dismiss the petition by the Carlsbad Certificated Supervisory Association.

The parties have seven (7) calendar days from receipt of this proposed decision in which to file exceptions in accordance with Section 33380 of the Board's rules and regulations. If no party files timely exceptions, this proposed decision will become a final order of the Board on June 1, 1977 and a Notice of Decision will issue from the Board.

Within ten (10) 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.

Dated: May 20, 1977

Jeff Paule
Hearing Officer



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Case No. LA-R-784
LA-R-107

November 29, 1977

The withdrawal by Carlsbad Unified School District of its Exception "I" filed in the above-captioned case is hereby allowed. As per stipulation among the parties, the unit is described as follows:

A certificated employee unit consisting of all certificated teaching personnel, whether under contract or on leave, including special education teachers, resource teachers, nurses, psychologists, psychometrists, counselors, music teachers, librarians, and annually-contracted intercession teachers; and excluding the superintendent, associate superintendent, assistant superintendent, director of pupil personnel, director of certificated personnel, principals, assistant principals, vice principals, day-to-day intercession teachers, day-to-day substitutes, and summer school teachers.

STEPHEN BARBER
Executive Assistant to the Board