

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARIN COMMUNITY COLLEGE DISTRICT,)	
)	
Employer,)	
)	
and)	
)	
CIVIL SERVICE ASSOCIATION, LOCAL 400, SEIU,)	Case Nos. SF-R-14
)	SF-R-15
Employee Organization,)	SF-R-454
)	
and)	PERB Decision No. 55
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)	June 26, 1978
Chapter 196,)	
)	
Employee Organization.)	
)	

Appearances: Richard Godino, Attorney (Breon, Galgani & Godino) for Marin Community College District; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg & Roger) for Civil Service Association, Local 400, SEIU, AFL-CIO; Patrick McGovern, Attorney for California School Employees Association; Harry Pieper, Personnel Officer for Marin Community College District; and John A. Grasham, Superintendent for Marin Community College District.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

OPINION

This case is before the Public Employment Relations Board (hereafter PERB) on the exceptions of the Marin Community College District (hereafter District) and the Civil Service Association, Local 400, SEIU, AFL-CIO, (hereafter SEIU) to the attached hearing officer's proposed decision.

The District excepted to the hearing officer's conclusion that the public information officer was not a management

employee within the meaning of Educational Employment Relations Act (hereafter EERA) section 3540.1(g);¹ and therefore is a member of a classified negotiating unit; that the maintenance supervisor, custodial supervisor, assistant custodial supervisor and campus police supervisor are not supervisory employees within the meaning of section 3540.1(m) and are, therefore, in a classified negotiating unit; and that the secretary I-personnel officer and secretary III-business manager are not confidential employees within the meaning of section 3540.1(c) and are, therefore, in a classified negotiating unit.

SEIU's exceptions to the hearing officer's proposed decision objected to the finding that the supervisor of gardeners/groundskeepers was a supervisory employee within the meaning of section 3540.1(m) and, therefore, excluded from a classified unit, and also to the determination that there are only two appropriate classified negotiating units. These latter exceptions centered on the hearing officer's refusal to find appropriate separate negotiating units of technical/quasi-professional employees and of office employees.

THE APPROPRIATE UNITS FOR NEGOTIATING

The jurisdiction of PERB to determine appropriate negotiating units for all classified employees of the District

¹All statutory references herein are to Government Code sections 3540 et seq., unless otherwise noted, also referred to as the Educational Employment Relations Act.

is conferred by section 3545 and section 3541.3(a) and by CSEA's disputed request for recognition in a unit covering all classified employees in the District.

The hearing officer determined that there should be two appropriate negotiating units, a "skilled trades and operations" unit and a unit comprised of all other classified employees, excluding management, supervisory and confidential employees. No party excepted to the hearing officer's determination that the "skilled trades and operations" unit is an appropriate unit, and we do not find it is a unit which is inappropriate as contrary to the purposes or policies of the EERA or PERB. Therefore, we adopt the hearing officer's finding that the "skilled trades and operations" unit is an appropriate unit.

What remains for us to determine is what are appropriate negotiating units for the balance of the classified employees who are not in the skilled trades and operations unit, and also what is the proper composition of these units.

SEIU has excepted to the hearing officer's decision that all classified employees not included in the skilled trades and operations unit be grouped together in a second residual unit. SEIU urges that, instead, separate appropriate units of technical/quasi-professional, and office clerical employees should be established by this Board. We basically agree with SEIU's contention. However, we do not find, as will be explained below, that all of the classifications for which SEIU has petitioned in its requested units properly belong in the units in which it suggests they belong.

In establishing separate appropriate units of technical/quasi-professional classifications and of office-clerical classifications, we are mindful that these units differ somewhat in composition from the "paraprofessional" and "office-technical and business services" units which were established in the Sweetwater² and Fremont³ decisions. This variation may be explained by the differences between the staffing in K-12 districts such as Pittsburg Unified School District, Sweetwater Union High School District, and Fremont Unified School District and community college districts such as Marin Community College District.

In the Pittsburg,⁴ Sweetwater and Fremont cases, "paraprofessional" units consisting primarily of teacher aides who worked directly with students at the elementary and secondary level were established. As the description "paraprofessional" indicates, members of this group work with professionals rather than performing at the professional level themselves. The educational requirement for the teacher aide was generally a 12th-grade education, but in one case was a 10th-grade education. The teacher aides were generally paid by categorical funding from federal and state sources, and their

²Sweetwater Union High School District (11/23/76) EERB Decision No. 4.

³Fremont Unified School District (12/16/76) EERB Decision No. 6.

⁴Pittsburg Unified School District (10/14/76) EERB Decision No. 3.

continued employment might depend on the continued availability of such non-district generated funding.

By contrast, in the Marin Community College District many classified employees who work closely with students, such as laboratory assistant, instructional assistant or A-V technician, function at a more advanced level than do "paraprofessional" employees in K-12 school settings. Their functions border on the professional and their educational prerequisites are similarly more demanding. Laboratory technicians are generally required to have an educational background equivalent to two years of college, including course work related to the area in which the technician works. They possess a high degree of technical skill, often in a complex subject area such as biology or chemistry, and their individual area of technical skill is related to the expertise of the instructor with whom they are assigned to work. Testimony indicates that laboratory technicians are familiar with, and test, sophisticated, technical apparatus, and that their work also requires the exercise of independent judgment. Thus, compared to the K-12 teacher aides, laboratory and instructional assistants seem to function with relative autonomy. A further distinction is that the laboratory assistants and related technical positions are not funded by categorical funding from state and local sources, but rather their positions are funded by district funds. Their continued employment, therefore, is not dependent on continued funding from non-district sources.

In addition to these instruction-related classifications, the District has a large number of responsible nonmanagement administrative and technical positions which form a part of an appropriate technical/quasi-professional negotiating unit. Like the instruction-related technical positions, incumbents in these positions generally are required to have two years, and occasionally four years, of college education or its equivalent, often with related specialized course work.

Incumbents in these positions typically function with relative autonomy and may frequently exercise independent judgment in the performance of their assigned duties.

While there are classifications in this unit, such as the production assistant, which are not required to have relatively high educational qualifications, they do share with other unit classifications the possession of a specialized skill, such as artistic set design ability. In addition, this position requires direct work with students. In any event, incumbents in these positions have little in common with employees in clerical positions.

In reaching a determination of what are appropriate units in the present case, we reaffirm our position articulated in Antioch Unified School District⁵ that application of the unit determination criteria in section 3545(a) requires a weighing and balancing in respect to each other in order to achieve

⁵Antioch Unified School District (11/7/77) EERB Decision No. 37.

consistency of application and the general objectives of the EERA. 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 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.

For this reason, the Board has consistently rejected the application of the labels "an" or "the" in connection with its appropriate unit determination process.

The first criterion is the "community of interest between and among employees." We determine that application of this criterion to the facts of this case leads to a separate appropriate unit of technical and quasi-professional employees, which we shall refer to as a "technical/quasi-professional" unit, and a separate unit of office and clerical employees, which we shall refer to as an "office-clerical" unit.

In establishing these separate negotiating units, we find that the criterion of community of interest requires that members of an appropriate negotiating unit share among themselves a community of interest based upon job function, educational and other special training qualifications, supervision, salary and other compensation relationships, and other relevant factors. The following division of classifications of classified employees into a technical/quasi-professional unit and into an office-clerical

unit is based upon our finding that each of these units has a community of interest which is separate and distinct from the other unit.

Employees in the technical/quasi-professional unit share a separate and distinct community of interest based on a variety of factors, including job function, education, other special training qualifications and supervision, and, therefore, constitute a separate unit for negotiating.

In this unit we place employees whose job requires them to function in a manner frequently calling for the exercise of independent judgment and who often function in a professional, quasi-professional or technical capacity. Performance in these positions entails considerable responsibility and involves the performance of relatively complex assignments, often relating to the educational mission of the institution, as contrasted to performance of the more routine paperwork and bookkeeping tasks performed by clerical employees.

Technical/Quasi-professional Unit: According to the district job description and testimonial evidence: The community liaison officer does community liaison work under general direction and must have the equivalent of two years of college, including courses in the behavioral sciences or a related field. The accountant performs technical accounting work of average difficulty in the establishment and maintenance of accounts and records, in the preparation of financial statements, and does related work. The accountant must have the equivalent to graduation from college including 16 semester

hours of professional accounting courses. The affirmative action officer is responsible under direction for the development and implementation of the district affirmative action program. This involves recommending to the superintendent and presidents goals and timetables for affirmative action employment goals, development of minority employment training programs, and providing comprehensive reports as to the racial, sex and ethnic composition of district employees in all categories.

The admissions and records officer manages the records and admissions functions of the college and is required to have the equivalent of completion of two years of college. The public information officer prepares and disseminates information concerning District activities, and designs and edits District publications. The public information officer is required to have completed the equivalent of graduation from college, preferably with a major in English or journalism. The coordinator of public events under general supervision coordinates the planning, promotion and staging of the community services concert and lecture series for the colleges in the district. This involves analyzing the facility requirements for artists and lecturers, assisting in budget preparation and contacting community groups concerning promotions of events. The coordinator of public events must have an educational background equivalent to two years of college.

The student placement officer administers the college's student placement program and advises students on placement matters. This position requires an educational background equivalent to graduation from college with a major in business or public administration or a related field. The purchasing agent, under general direction, organizes and performs the purchasing, inventory and warehousing operations of the district and does related work. The purchasing agent must have the equivalent to graduation from college preferably with a major in business administration or a related field. The data processing analyst systems programmer implements and maintains the computer operating system and writes application programs including the ability to write programs in assembly language. This position also requires an intimate knowledge of the IBM DOS/VS disc operating system. Incumbents are required to have an education equivalent to four years of college.

The data processing analyst programmer also writes computer programs and is required to have an education equivalent to four years of college. The planning associate-construction assists in review of planning and contract documents for construction departments, prepares documents for submission to state agencies and related functions related to construction at the college. This position requires knowledge of building codes and related regulations, the ability to read and interpret complex building plans and specifications, completion of 12th grade and four years construction experience. The facilities coordinator coordinates budgeting and implementation

of minor capital outlay projects, and represents the Office of Planning in consultation with local agencies, and related functions. The facilities coordinator must be able to read and interpret complex building plans and specifications and have completed the equivalent to graduation from college in the related specialized field.

The accounting technician performs subprofessional work which may include bookkeeping, contract analysis, preparation of financial statements, conducting audits or a variety of other accounting functions. The accounting technician must have at least a 12th grade education including or supplemented by at least nine hours of a professional accounting curriculum. The test technician arranges for, administers and scores a variety of student tests and trains test proctors. The test technician must have the equivalent of two years of college. The admissions technician performs a variety of specialized and difficult technical and clerical work involving the processing of student applications for admission. Incumbents in this position must have the equivalent to completion of two years of college.

The library technical assistant performs a wide variety of responsible subprofessional library duties. These may include simpler classification and descriptive cataloging of books, supervising the ordering and receiving of new books and periodicals, supervising circulation and reserve book services, complex bibliographic research for books to be ordered, answering general questions and referring reference questions

to professional librarians. Library technical assistants must have specialized training in library technology which may be acquired through the completion of a two-year community college library technology program or through on-the-job library experience. Library technical assistants are required to have the equivalent to the completion of two years of college. The typesetter/graphics designer, under general supervision, conceptualizes, plans and/or designs comprehensive and basic layout of materials and prepares them for the camera-ready printing stage, operates typesetting machines and composes copy of a varied and difficult nature and performs related work. The incumbent in this position must have the ability to independently plan, design and lay out a variety of materials, do difficult clerical work including figuring costs and economical uses of paper and supplies, and must have an education equivalent to completion of the 12th grade. The electronics technician works under general supervision to install, maintain, adjust and perform major repairs to a wide variety of electronic and mechanical equipment. The electronics technician advises faculty and student personnel in preventive maintenance and the correct use of equipment. The electronics technician must have an education equivalent to the completion of two years of college including courses in electronics theory and practices. The electronics technician works with the audio-visual department of the college.

The instructional materials specialist works under general supervision to design and construct three-dimensional teaching

aids and performs related work. The three-dimensional aids may range from dental drills to solar systems. The instructional materials specialist transforms teaching concepts and ideas into functional aids involving the fabrication of scale models in metal, wood and plastic. The instructional materials specialist must have the equivalent of two years of college with a major in art. The graphic artist works under general supervision to prepare art work for instructional purposes either as a direct visual aid or for duplication and performs related work as required. The graphic artist must have the equivalent to completion of two years of college with a major in art. The house gallery manager is connected with the drama department and deals with administration of the college theater. The house gallery manager is assisted by the production assistant.

The campus public information and publications assistant, under general supervision, assists the college president in dissemination of information concerning the college and assists with the design, layout and editing of publications. The campus public information and publications assistant must have an educational background equivalent to completion of two years of college with course work in English or journalism.

Other classified employees in this negotiating unit, many of whom must have specialized technical training, work directly with students in connection with the educational program. The student activities assistant, under general supervision, works directly with students providing advice, information and other

assistance to students concerning the organization and functioning of student activities at the college. Employees in this position must have the equivalent to the completion of one year of college. The audio-visual technician functions under general supervision, and delivers and operates audio-visual supplies and equipment, and provides technical guidance to instructors and other personnel concerning the use and maintenance of audio-visual materials and equipment. The audio-visual technician works with faculty and students to prepare audio-visual aids such as learning packets, tape recordings, cassette recordings and overhead transparencies. The audio-visual technician must have the equivalent to completion of two years of college including courses in art and photography. The instructional assistants work under general supervision to perform moderately difficult tasks at the paraprofessional level in support of the instructional program. They serve as an initial source of information and assistance to students contacting various academic departments, and providing information about the course offerings, services and college policies and procedures. They answer questions having to do with instructors' assignments, class procedures and instructional methods. They also assist students in the use of automated learning equipment. Instructional assistants are required to have the equivalent to completion of two years of college.

The laboratory technician-independent study functions under general supervision to operate independent study laboratories

and supervise the operation of equipment by students and faculty. This position involves providing assistance in the use of film strips, lesson tapes, cassettes and other instructional materials. The life science laboratory technician aids instructors and students in the classroom, prepares chemicals, apparatus, etc., works with student employees who are lab assistants and drives a bus on field trips. Other laboratory technicians perform similar functions and must have similar qualifications, and are also included in this negotiating unit. This classification shall include all employees sometimes referred to as laboratory assistants, but shall not include work-study students. The production assistant assists directors in the production of all drama department productions including both rehearsals and performances. The production assistant edits play scripts according to the instructions of the director, prepares and annotates the prompt book, prepares rehearsal schedules, cast and crew call sheets and a variety of related tasks. The production assistant must have the equivalent to completion of the 12th grade.

Office-Clerical Unit: We find a third appropriate unit for negotiating to be comprised of office-clerical personnel. Positions in this negotiating unit primarily involve the performance of clerical tasks of a relatively routine and less complex nature and which do not require the frequent exercise of independent judgment or entail major administrative responsibility. Incumbents in the office-clerical

classifications do not regularly or primarily interact directly with students in connection with the educational program of the college. Classifications in this negotiating unit do not generally require an educational qualification beyond the completion of a 12th grade education although some do.

Secretaries take and transcribe dictation of correspondence, memoranda, reports, and other materials, and perform related secretarial and clerical tasks. They are required to have the equivalent of completion of the 12th grade. Typist clerks I and II, account clerks I and II, accounts payable and order clerks, library clerks I and II, payroll clerks I and II, receiving clerks and personnel clerks generally perform simple clerical tasks or assignments of moderate difficulty. The control clerk, an interim position, takes and delivers messages and input data from user departments or keypunch operators. These above positions generally require an educational background equivalent to the completion of the 12th grade.

The governance system technician types, copies and may collate correspondence, minutes of meetings, agendas and related materials for the Academic Senate, the college cabinet and other campus committees and also keeps track of intercommittee communication. This employee collates and distributes the faculty handbook. The curriculum technician prepares schedules for departmental course offerings and other campus activities from information which has been furnished by the campus departments requesting the scheduling. Regarding

the governance system technician and curriculum technician positions, we note that our determination of unit placement is based upon the documentary and testimonial evidence presented at the hearing. The position title is merely the descriptive label which the District has placed upon this classification. Similarly, the District's position description is not controlling. Our unit placement determination is based upon our finding as to the actual nature of the work which is performed by incumbents in the position. While the governance system technician and curriculum technician may occasionally exercise technical skill, their functions are primarily clerical and more closely resemble the functions and level of performance of other positions in the office-clerical unit than of positions in the technical/quasi-professional unit. The financial aids assistant performs a wide variety of specialized secretarial and related work. The financial aids assistant must have an educational background equivalent to completion of 12th grade.

The counseling aides I make counseling appointments, furnish information from the catalog and refer students to counselors. The background requirements for these counseling aide positions is general clerical experience or the educational equivalent thereof. Other classifications in the office-clerical unit include the keypunch operator, data processing machine operator, data processing control clerk, senior duplicating clerk, offset duplicating machine pressman, switchboard operator, offset machine duplicator and bookstore purchasing and stock clerks.

In reaching our determination of appropriate negotiating units, we primarily rely upon application of the "community of interest" criterion. Little or no evidence was produced by the parties concerning the other two statutory criteria. No party has contended in an exception to the hearing officer's proposed decision, that either the established practices or the efficient operation of the school district should operate either to support or oppose the negotiating units established by the Board in this decision. We also find, based upon the facts, that neither of these unit criteria requires a result different than the result we have reached through application of the community of interest criterion. We note, however, that the establishment of three classified negotiating units is consistent with the number of appropriate units we found to exist in Sweetwater,⁶ Fremont⁷ and Antioch,⁸ and we do not, therefore, believe that the units established in this case are overly fragmented or will otherwise place an unreasonable burden upon the District.

We note that SEIU's petition for a negotiating unit of office employees included the positions of career center/job placement technician and bookkeeper. No evidence was

⁶Sweetwater Union High School District (11/23/76) EERB Decision No. 4.

⁷Fremont Unified School District (12/16/76) EERB Decision No. 6.

⁸Antioch Unified School District (11/7/77) EERB Decision No. 37.

introduced into the record regarding the existence, number or duties of incumbents in these positions. Therefore, we have no adequate basis to make a determination regarding them and consequently decline to place these classifications in a negotiating unit at this time.

In addition, a position of "job placement technician" appears in District Exhibit No. 2 entitled "IVC Full-time Classified Detail List of Positions in Sequence by Position." This list indicates that the position is vacant. No evidence was introduced as to the existence, number, or duties of any incumbents in this position. The job title alone is not sufficiently descriptive of the duties of an incumbent in this position. We, therefore, have no basis to make a determination regarding this classification and consequently decline to place it in an appropriate negotiating unit at this time.

Confidential Employees

The District has excepted to the hearing officer's conclusion that the secretaries I-personnel officer position and the secretary III-business manager are not confidential employees within the meaning of section 3540.1(c).

Section 3540.1(c) provides:

"Confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

Section 3543.4 states in pertinent part that:

No person serving in a management position or a confidential position shall be represented by an exclusive representative.

In Fremont Unified School District, the Board interpreted the term "employer-employee relations" to include, at the least, employer-employee negotiations and the processing of grievances. In Sierra Sands Unified School District,⁹ we explained that:

The underlying assumption then is that the employer, in order to fulfill its statutory role in its employer-employee relations, must be assured of the undivided loyalty of a nucleus of staff designated as "confidential employees".

The record indicates that the classified personnel officer is involved in negotiations, particularly with respect to salary surveys with comparison institutions. The personnel officer would be involved in the management team which works on negotiations and would participate in recommendations.

The secretaries to the personnel officer have access to and maintain files with respect to classified salaries, fringe benefits, evaluation procedures and other information that might relate to negotiations. They also are involved in the stream of communications on negotiation subjects between the personnel officer and other management personnel such as the superintendent. On this basis, we find that the secretaries I to the personnel officer are confidential employees.

The secretary III to the business manager is also found to be a confidential employee. The business manager is also

⁹Sierra Sands Unified School District (10/14/76) EERB Decision No. 2.

considered by the superintendent to be a member of his negotiating team. Confidential communications between the superintendent and the business manager pass through the business manager's secretary.

The District also states in an exception to the hearing officer's decision that if the public information officer is not found to be management, he is confidential. This contention is made for the first time on this appeal. It is, therefore, not a proper "exception" to the hearing officer's proposed decision because other parties were not given an opportunity to present evidence on that issue at the hearing and the hearing officer was never asked to make, nor did he make, that determination.

Management Employees

Section 3540.1(g) defines "management employee":

"Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board.

The District excepts to the hearing officer's determination that the public information officer is not a management employee. We affirm the hearing officer's finding for the reasons stated in her proposed decision. The position description provided in District Exhibit 4 for the public information officer, dated May 1970, together with testimonial evidence, fails to adequately indicate the role or authority of the public information officer to formulate policy. The

evidence offered by the District failed to show the public information officer fits within the definition of management as contained in the EERA and our cases.

Supervisory Employees

The District has excepted to the hearing officer's determinations that the maintenance supervisor-College of Marin, custodial supervisor, the assistant custodial supervisor and the campus police and security supervisor are not supervisory employees.

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.

We hereby affirm the hearing officer's determination that these four positions are not supervisory within the meaning of section 3540.1(m), and adopt her findings of fact which led her to not exclude these positions from a classified negotiating unit.

SEIU excepted to the hearing officer's determination that the supervisor of gardeners/groundskeepers is a supervisor within the meaning of section 3540.1(m). We agree with SEIU's position and find that this position does not possess the necessary supervisory attributes to satisfy the statutory requirements of "supervisor."

The supervisor of gardeners/groundskeepers is a working supervisor who frequently works with his small crew on the maintenance of the plantings, the parking lots and other outside grounds areas. While there is some testimony that the supervisor of gardeners/groundskeepers would "mention something" informally to an employee if the employee was often late to work, there is no indication that this was ever done. Moreover, there is no indication that this would be equivalent to the authority to "hire, transfer, . . . suspend, discharge or discipline" or to effectively recommend such action within the meaning of the EERA. Communications concerning these matters appear to be unwritten and otherwise informal. Also, employees in this position do not substitute for the supervisor of plant facilities when he is on vacation. Although the supervisor of gardeners/groundskeepers job description suggests that he may "assign" work, the testimony fails to indicate that he assigns work through exercise of independent judgment or in a way which would cause him to be defined as a supervisor within the meaning of section 3540.1.(m)¹⁰

¹⁰On the matter of "assignment" of work, the testimony of a rank and file gardener/groundskeeper, in pertinent part, is as follows:

(vol. II, page 121)

Q. Okay. And, do they [gardener/groundskeeper supervisors] give you work orders? Tell you that a certain job has to be done because they heard about a problem?

A. Yes. A work order is usually passed on from the supervisor over the immediate supervisor.

(footnote cont. on next page)

In our decision in Sweetwater, the head custodians, who were determined to be supervisors, were found to "effectively recommend" the hiring of custodians, to have authority to assign and direct the work of custodians, to inspect their work on a daily basis, and to direct necessary corrective action.

In the Board's decision in San Diego Unified School District,¹¹ head gardeners were found to be supervisors because they possessed several of the indicia of supervisory status enunciated in section 3540.1(m). They supervise crews of from five to nine employees, independently develop work schedules for their respective crews, spend approximately two-thirds of their time in the performance of supervisory work, and prepare and sign probationary work performance evaluations.

(footnote 10 cont.)

Also, at vol. II, page 112 this same person testified:

- Q. Okay. If there are special requests for some sort of gardening or grounds work that needs to be done, where would that come from?
- A. It would come from Oley Prahm's office.*
- Q. If a tree fell down or there was some damage to the shrubbery or lawn or something, the request to repair that would have to come from Oley Prahm?
- A. No. As I mentioned, we do have our own assigned areas which we do police ourselves....

* Prahm is the supervisor of plant facilities, a stipulated supervisor.

¹¹San Diego Unified School District (2/18/77) EERB Decision No. 8.

In contrast to the head custodian and head gardener positions, the supervisor of gardeners/groundskeepers position in issue has not been shown, on the basis of the scant record relating to this position, to possess either the authority or job responsibilities which would satisfy the requirements of the statutory definition. The weight of the evidence, therefore, is clearly against the finding of supervision.

ORDER

The Public Employment Relations Board directs that:

Confidential Employees

The secretary I to the personnel officer and the secretary III to the business manager are confidential employees within the meaning of section 3540.1(c), and are, therefore, excluded from a negotiating unit.

Management Employees

The public information officer is not a management or a confidential employee within the meaning of section 3540.1(g) of the EERA.

Supervisory Employees

The maintenance supervisor-College of Marin, custodial supervisor, assistant custodial supervisor, campus police security supervisor and the supervisor of gardeners/groundskeepers are not supervisory employees within the meaning of section 3540.1(m) of the EERA.

Appropriate Units for Negotiating

The following units are appropriate for the purpose of meeting and negotiating, provided an employee organization is selected as the exclusive representative:

Skilled Trades and Operations Unit: Including campus police and security supervisor, campus police officer, parking control officer, watchman, receiving clerk, custodial supervisor, assistant custodial supervisor, custodian, matron, gardener/groundskeeper, athletic equipment manager-trainer, pool maintenance man, maintenance supervisor-College of Marin, maintenance carpenter, maintenance electrician, maintenance

heating and air-conditioning mechanic, maintenance plumber, maintenance painter, maintenance mechanic, and maintenance man; supervisor of gardeners/groundskeepers; excluding all other classifications, including management, supervisory and confidential employees.

Technical/Quasi-professional Unit: Including accountant, community liaison officer, test technician, public information officer, admissions technician, coordinator of public events, library technical assistant, student activities assistant, laboratory technician, audio-visual technician, electronics technician, typesetter-graphic designer, data processing systems analyst programmer, data processing analyst programmer, instructional materials specialist, instructional assistant, production assistant, graphic artist, accounting technician, student placement officer, admissions and records officer, facilities coordinator, planning associate-construction coordinator, affirmative action officer, house gallery manager, purchasing agent, and campus public information and publications assistant; excluding all other classifications, including management, supervisory and confidential employees.

Office-Clerical Unit: Including key punch operator, data processing machine operator, data processing control clerk, curriculum technician, financial aids assistant, typist clerk I and II, account clerk I and II, accounts payable and order clerk, governance system technician, secretary I, (but excluding the secretary I - superintendent), II and III, library clerk I and II, senior duplicating clerk, switchboard

operator, payroll clerk I and II, receiving clerk, personnel clerk, offset duplicating machine pressman, offset machine duplicator, counseling aide I, bookstore purchasing-stock clerk; excluding all other employees, including management, supervisory and confidential employees.

Regarding the positions of career center/job placement technician, bookkeeper and job placement technician, for the reasons stated above, we make no determination as to the unit placement, if any, as to these classifications.

Within 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) if 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.

Harry Gluck, Chairperson

Jerilou Cossack Twohey, Member

Raymond J. Gonzales, dissenting in part:

I dissent from the majority's conclusions that the secretary III to the business manager is a confidential employee and that the maintenance supervisor-College of Marin, custodial supervisors, campus police and security supervisors, and supervisors of gardeners and groundskeepers are not supervisory employees.

Secretary III to the Business Manager

While the business manager in the past was a member of the superintendent's negotiating team, the record reflects that he is no longer involved in negotiations. The District's personnel officer testified:

...insofar as staff assistance is concerned, we did involve the business manager [in negotiations] for a time. As I indicated, the business manager resigned.

Insofar as staffing [for future negotiations] is concerned, we have made no definitive plans as to how we're going to proceed during the negotiating process. It's a matter on our minds, but I don't have a specific answer as to how we'll deal with it.

Since there is no evidence regarding the present participation in negotiations of the business manager, if there is a present incumbent, and the secretary III to the business manager, it is impossible to conclude that the secretary III is a confidential employee.

Even based on the facts of the past participation of the business manager and secretary III in negotiations, the hearing officer's proposed decision that the secretary III is not

confidential should be affirmed. The evidence showed only that she costs out proposals which the Board held in Sierra Sands Unified School District¹ is not alone enough to make an employee confidential.

Supervisory Issues

As indicated in my dissent in Oakland Unified School District,² I lean very heavily in favor of establishing minimal requirements within the language of the Educational Employment Relations Act³ for the qualification of an employee as a supervisor. This is because the existence of independent and viable nonsupervisory and supervisory units is the best safeguard against disruption of the educational process of a school district in case of an employee strike or other concerted activity. Additionally, I make a clear distinction between the Educational Employment Relations Act and the federal Labor Management Relations Act, as amended,⁴ since the federal statute does not grant collective bargaining rights to supervisors.

Even so, the scant record in this case has made it extremely difficult for me to reach the conclusions that the maintenance supervisor-College of Marin, custodial supervisors,

¹(10/14/76) EERB Decision No. 2.

²(4/14/78) PERB Decision No. 50.

³Gov. Code sec. 3540 et seq., and specifically section 3540.1(m).

⁴29 U.S.C. section 151 et seq. The Labor Management Relations Act amended the National Labor Relations Act.

campus police and security supervisors, and supervisors of gardeners and groundskeepers are supervisory employees. Most of the evidence regarding these positions consists of the District's job descriptions. The District's superintendent did testify that the job descriptions accurately reflect the duties of the positions, and there was no evidence to the contrary. However, the job descriptions are only conclusory in their use of the words "assigns" and "supervises," and they do not expressly address themselves to the statutory requirement that the exercise of supervisory functions and authorities requires the use of independent judgment.

Additionally, section 3540.1(m) states that a determination whether or not an employee is supervisory must be made "regardless of job description." However, I do not read this language to mean that job descriptions cannot be considered in such a determination, but that a determination should not be based only upon a job description, and that the testimony of a witness should be weighed more heavily than a conflicting job description.

In the present case there is more than the job descriptions alone. There is also the unrebutted testimony of the District's superintendent that the job descriptions are accurate, and additional evidence on the various positions which does not conflict with the job descriptions. For instance, there is testimony that the custodial supervisor "is in charge of the custodians" and that the supervisor of gardeners and groundskeepers "is in charge of" and "supervises" the gardeners and groundskeepers.

I find that the positions in question are supervisory within the meaning of section 3540.1(m) according to the following reasoning. The job descriptions of the maintenance supervisor-Collge of Marin, custodial supervisors, campus police and security supervisors, and supervisors of gardeners and groundskeepers state that these individuals assign work to and direct other employees. In each case, the list of duties indicates a wide range of responsibilities such that relatively complex judgments must necessarily be involved. It can be inferred from this that the assignment and direction is not merely routine or clerical in nature, but requires the use of independent judgment. Therefore, it is concluded that these positions are supervisory within the meaning of section 3540.1(m).

~~Raymond J. Gonzales, Member~~



STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:

MARIN COMMUNITY COLLEGE DISTRICT,

Employer,

and

CIVIL SERVICE ASSOCIATION, LOCAL 400,
SEIU,

Employee Organization,

and

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,
Chapter 196,

Employee Organization

Case Nos. SF-R-14
SF-R-15
SF-R-454

Appearances: Richard Godino, Attorney (Breon, Galgani, and Godino), for Marin Community College District; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg, and Roger), for Civil Service Association Local 400, SEIU; Patrick P. McGovern, Attorney, for California School Employees Association, Chapter 196.

Proposed Decision by Sharrel J. Wyatt, Hearing Officer.

PROCEDURAL HISTORY

On April 1, 1976, Civil Service Association, Local 400, SEIU ("SEIU") filed two requests¹ for recognition with the Marin

¹One request was for a "Technical Employees Unit" of approx. 39 persons including the following classifications: key punch operator, p.d. analyst programmer, data processing machine operator, typesetter/graphic designer, graphic artist, instructional materials specialist, electronics technician, audio visual technician, designer/stage technician, lab assistant, production assistant, offset duplicating machine pressman, offset machine duplicator, senior duplication clerk, lab technician. The other request was for a "Skilled Trades and Operations Unit" including

Community College District ("District").

On April 1, 1976, California School Employees Association and its College of Marin Chapter 196 ("CSEA") requested recognition for all classified employees of the District.²

On April 29, 1976, SEIU intervened for an Educational Office Employees Unit.³

approximately 62 employees in the following classifications: campus police and security supervisor, campus police officer, parking control officer, watchman, receiving clerk, custodial supervisor, assistant custodial supervisor, custodial matron, grounds supervisor, gardener/groundskeeper, athletic equipment manager/trainer, pool maintenance man, night watchman, maintenance supervisor, maintenance carpenter, maintenance electrician, maintenance heating and air conditioning mechanic, maintenance mechanic, maintenance painter, maintenance plumber, maintenance man, and supervisor of gardeners and grounds.

²CSEA's proposed unit would contain approximately 221 employees including, but not limited to, food services, clerical and secretarial, operations and maintenance (custodial/maintenance/grounds), instructional aides, transportation and would exclude noon duty supervisor, and management, confidential and supervisory employees. The evidence reflects no food services or transportation employees in this District.

³SEIU's proposed "Educational Office Employees" unit consists of approx. 80 employees in the following classifications: community liaison officer, curriculum technician, test technician, coordinator of public events, financial aids officer, admissions technician, typist-clerk I and II, house gallery manager, library technician assistant, accounts payable and order clerk, instruction assistant I, governance system technician, student activities assistant, counseling aide I, student placement officer, career center/job placement technician, secretary I, II, and III, payroll clerk I and II, library clerk I and II, and bookkeeper.

- The District filed its response on May 4, 1976, challenging the appropriateness of the units requested and claiming certain positions as management, supervisory, or confidential.

A hearing was held on December 6, 7, and 17, 1976 before Jim Pinnell, a board agent. At the hearing, the parties stipulated that the classified personnel officer and secretary to the superintendent are confidential, that the registrar, data processing production supervisor, financial aids officer, and business officer are supervisory, and that the business manager, director of planning, assistant business manager, supervisor of plant operations and maintenance, bookstore manager I and II, and maintenance supervisor are either management or supervisory employees. These stipulations are accepted without inquiry.

ISSUES

1. What is the appropriate unit or units for classified employees of the District?

2. Whether the public information officer, purchasing agent and/or planning associate are management employees within the meaning of Section 3540.1(g).⁴

3. Whether the maintenance supervisor--College of Marin, supervisor of gardeners/groundskeepers, custodial supervisor, assistant custodial supervisor, and/or campus police security supervisor are supervisory employees within the meaning of Section 3540.1(m).

⁴All citations are to the Government Code unless otherwise indicated.

4. Whether the secretary I--superintendent, secretary I--certificated personnel officer, secretary I--classified personnel officer, secretary III--business manager, secretary IV--president, College of Marin and/or secretary IV--president, Indian Valley College are confidential employees within the meaning of Section 3540.1(c).

The Appropriate Units

The District has two campuses in Marin County, College of Marin with an average attendance of approximately 6000-7000 per day and Indian Valley College with an average attendance of approximately 2500 per day. A substantial majority of classified employees work at the College of Marin campus. Each campus has a president.

The "skilled trades and operations" unit sought by SEIU is closely akin to the "operations-support services" unit found presumptively appropriate in Sweetwater Unified School District⁵ in that it includes custodial, maintenance and grounds positions. The SEIU unit also includes campus security classifications and the receiving clerk. In Sweetwater and Fremont Unified School District⁶, the Board set forth criteria for determining community of interest including work function, supervision, hours, educational requirements, roving work location, and compensation.

⁵Sweetwater Unified School District, EERB Decision No. 4, November 23, 1976.

⁶Fremont Unified School District, EERB Decision No. 6, December 16, 1976.

On the campus of the College of Marin, the supervisor of operations and maintenance, Mr. Prahm, reports to the president. The custodial supervisor reports to Prahm. The assistant custodial supervisor, pool maintenance man and custodians report to the custodial supervisor.

The maintenance supervisor reports to Prahm. All maintenance employees and the receiving clerk report to the maintenance supervisor.

The supervisor of gardeners and groundskeepers reports to Prahm. The campus police, parking patrol officers and watchmen for both campuses report to the campus police and security supervisor.

At Indian Valley College, a much smaller campus, the maintenance supervisor reports directly to the campus president. A custodial supervisor and all maintenance employees report to the maintenance supervisor.

Each of the positions sought in the "skilled trades and operations" unit shares a common line of supervision.

The work function of each of the positions sought in this unit is similar. Most of the employees sought in this unit report to the maintenance yard. As in Sweetwater and Fremont, classifications included in the skilled trades and operations unit herein generally share roving work locations and are involved in driving and repairing vehicles and other district equipment, and perform janitorial, gardening and general maintenance work at district facilities. The primary work

function of all these employees involves providing a proper physical environment and support services for students.

Classifications which are sought in this unit but not found in the presumptively appropriate Sweetwater operations and support-services unit include the campus police, watchman, and parking patrol officers and receiving clerk. The receiving clerk receives, unloads and distributes materials to the campus. This position involves physical labor and is an integral part of the function of employees who provide support services as a work function and share common supervision with these classifications. While the campus police, watchman, and parking patrol officers do not work with their hands and tools to maintain and clean the campuses, they do maintain safety conditions, protect the physical facility, and maintain parking control. Thus, their work function involves maintaining the campus in terms of safety as support services for students. They, too, share common supervision and a roving work location with other support services employees. Several employees within this proposed unit work hours which are different from those of clerical, technical, and paraprofessional employees who work from 8 a.m. to 5 p.m., approximately. Custodians are employed on a day and night shift, watchmen work at night, campus police work evenings and nights, some gardeners arrive at 7 a.m. and work until 3 p.m.

Based on the foregoing, it is concluded that a "skilled trades and operations" unit is an appropriate unit.

SEIU has sought two additional units, a "Technical Employees Unit" and an "Educational Office Employees Unit."

In Sweetwater and Fremont, the Board found an office-technical and business services unit to be presumptively appropriate. Here, SEIU seeks to carve out technical employees in one unit and clerical into another. No party has sought the Sweetwater unit. Thus, the issue is whether the units sought are appropriate.

In Sweetwater, instructional aides (paraprofessionals) were found to have a separate and distinct job function involving directly assisting the educational development of students, and separate educational requirements and lines of supervision.

The Sweetwater office-technical and business services unit included clerical and secretarial, and duplication classifications based on distinctive work functions involving performance of clerical and recordkeeping work, educational requirements, compensation, work hours and supervision. Fremont, in addition, included key punch operators, computer operators, programmers and programmer analyst within this unit based on the same community of interest criteria.

The work function of employees sought in the "Educational Office Employees Unit" involves the range of clerical and record-keeping skills while including classifications which work primarily or directly with students such as the governance system technician, student activities assistant, admissions technician and counseling aides along with employees who are

required to have a reasonably high degree of specialized skill such as the test technician, curriculum technician and library technical assistant. Virtually all employees in this proposed unit are required to have a high school diploma or the equivalent and several positions require or prefer two years of college; some require the equivalent of college graduation.

The work function of employees in the proposed "Technical Employees" unit also requires a large degree of clerical and recordkeeping skill; i.e., the audio-visual technician keeps inventory records and types work orders and film rental requests; 40 wpm typing is required for lab technicians; and 60 wpm typing and shorthand for the production assistant.

Other positions require a higher degree of technical skill such as the data processing analyst/programmer.

Some technical employees perform minor repairs, clean and must do some lifting. It cannot be said that this is generally true of employees within the proposed "Technical Employees" unit.

Some positions, such as the audio-visual technician, production assistant, and laboratory assistant, involve substantial direct involvement with students in the educational process. Virtually all positions in this proposed unit require graduation from high school. Some require or prefer two years of college. A few require the equivalent of graduation from college. None require special licensing or certification.

All classified employees share common benefits. The salary range for the proposed "Technical Employees" unit is from range

25 to 41. The range for the proposed "Educational Office Employees" unit is from range 22 to 41. While most "technical" classifications are somewhat higher on the classification range, it cannot be said that their range is separate and distinct from the range of "educational office" classifications.

From the record, it would appear that employees in both proposed units work a normal work day (8:30-4:30) except for data processing, where some employees work from 8 a.m. to 5 p.m. and others work from 5 p.m. to 10 p.m. With the exception of a few classifications, such as laboratory technicians, library technical assistants and counseling aides, all employees in both of these proposed units are employed on a twelve-month basis.

Within both proposed units, supervision is scattered. Currently, the president of Indian Valley College supervises the audio-visual technician. When a director of educational services is hired, he will supervise the audio-visual technician, as well as employees in duplicating, mail, community services and the curriculum technician. The district business manager supervises the data processing production supervisor, who supervises employees in data processing including key punch operators, data processing systems/analyst/programmer and data processing analyst/programmer. The business manager also supervises accountant clerks and payroll clerks. Secretary IV's are supervised by the presidents, Secretary III's by deans, secretary II's by assistant deans and secretary I's by department heads. Laboratory assistants and the production assistant

are supervised by the department to which they are assigned. The head librarian supervises library technical assistants and library clerks.

Based on work function, educational requirements, compensation, hours and supervision, there is no clear and distinct community of interest which separates a unit of "Technical Employees" from a unit of "Educational Office Employees." Rather, each of these proposed units overlaps with the other, so as to form a continuum as to work function, educational requirements, hours, compensation and supervision. It is, therefore, found that separate units of "Technical Employees" and "Educational Office Employees" are not appropriate. A presumptively appropriate "Office Technical and Business Services" unit would be appropriate based on community of interest except for the inclusion of several positions which appear to be appropriate to a unit of paraprofessional employees such as laboratory assistants and counseling aides. Since no party has sought a separate unit for paraprofessional employees, these classifications will be included with the office technical and business services classifications in a residual unit.

- A residual unit is appropriate rather than an office technical business services unit for the further reason that CSEA had sought a wall-to-wall unit while SEIU sought units containing specified units. Several positions were not included in SEIU's two proposed units that would be included in a wall-to-wall or a residual unit after carving out the "Skilled Trades and Operations Unit" sought by SEIU such as the job placement technician, campus information and publications assistant, accounting technician, account clerk I and II, bookstore purchasing I stock clerk, financial aids assistant, switchboard operator and personnel clerk. Therefore, it is found that the technical employees unit and educational office employees are not appropriate. These classifications will be placed in a residual unit.

Whether Certain Employees are Management

Public Information Officer

The District seeks to exclude the public information officer as a management employee. CSEA and SEIU seek to include this position in the unit.

The public information officer has an office near the superintendent and reports directly to him. She is responsible for publications and for preparing and disseminating public information including communications with the press, radio, and television, and setting up news conferences. She meets with the middle management group and the district coordinating

council to prepare for sensitive board agenda items. She would issue press release regarding collective bargaining. She develops the publications budget, \$85,000 this year, for four publications (including schedules of classes and catalogues) which are sent to households in the county. Once the budget is approved, she implements it without further approval. She attends board meetings regularly.

In interpreting Section 3540.1(g)⁷ of the Act which defines management employee, the Board has concluded that a person must possess both of the functions delineated in that section in order to be excluded from negotiating rights as a management employee.⁸

The record establishes that the public information officer disseminates policy. Nothing in the record supports a finding that the public information officer has either "significant responsibilities for formulating" that policy or for "administering district programs." It is, therefore, found that the public information officer is not a management employee.

Planning Associates

The District would exclude the planning associate positions as management. CSEA and SEIU would include them in the unit.

⁷Section 3540.1(g) states: "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board.

⁸Lompoc Unified School District, EERB Decision No. 13, March 17, 1977; Los Rios Community College District, EERB Decision No. 18, June 9, 1977.

The planning associate for facilities position has been replaced by the position of facilities coordinator who is responsible for inspecting job sites and making recommendations for changes in remodeling and rehabilitation of facilities including review of the program; i.e., the need for removal of architectural barriers for the handicapped, and developing proposed solutions. The position works with various departments and student groups. After a plan is developed, it is forwarded to the planning director for approval. The facilities coordinator oversees implementation. The facilities coordinator has never participated on the management team for negotiation. The District intends to include him on their team in the future. The record does not reflect whether he has attended any meetings thus far. He has not been required to do so.

The planning associate/construction coordinator works with inspectors at the job site and recommends changes in orders. He must operate within the budget. He reviews planning and contract documents for construction projects. Contractors are selected by the board by competitive bid.

As indicated earlier, to exclude an employee from rights under the EERA as management, the Board has held that the employee must have both "significant responsibility for formulating district policies" and "administering district programs."

The facilities coordinator and planning associate/construction coordinator recommends and oversees construction programs. The recommendations are forwarded to the planning director for approval. These positions are several steps removed from those

who formulate policy. As such, they are not management employees under the Act.

Purchasing Agent

The District would exclude the purchasing agent as management. CSEA and SEIU would include this position in the unit.

The purchasing agent supervises and works with the development of inventory programs. He is responsible for developing procedures for purchases and he receives, examines and approves requisitions for the purchase of supplies and services, verifies availability of funds, and related activities. As part of middle management, he meets with the superintendent before each board meeting. He reports to the district business manager, who is responsible for seeing that all purchases comply with the Education Code.

No employees are supervised by the purchasing agent. He works with employees in the district business office. Policies and procedures relative to purchases which are developed by the purchasing agent are routed from him to the business manager, then to the college president and then to the board of trustees for approval. He does not have responsibility for developing budgets.

Based on his duties, the purchasing agent has neither significant responsibilities for formulating district policy nor for administering district programs. Therefore, it is found that the purchasing agent is not a management employee.

Whether Certain Employees are Confidential

Secretary I - Superintendent

The District would exclude the secretary I-superintendent as confidential. CSEA and SEIU would include this position in the un

The secretary to the superintendent was excluded by stipulation. The secretary I works in the same office and helps prepare board minutes for approval by the superintendent and submission to the board. The secretary I has major responsibility for preparing the board agenda and materials including items for executive session where meet and confer and meet and negotiate matters are covered. She also receives phone calls and types letters and memos to the campus presidents and others regarding negotiations.

She does not attend executive sessions of the board. She does help prepare factfinding reports in preparation for factfinding.

Section 3540.1(c) states:

"Confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

In preparing items for executive session of the board and in handling correspondence for the superintendent relative to employer-employee relations, the secretary I-superintendent is a confidential employee within the meaning of the Act.

Secretary I's - Personnel Officer

The District would exclude the secretary I's to the personnel officers as confidential. CSEA and SEIU would include them in the union.

The two secretary I positions in the personnel office prepare salary studies comparing salaries, fringes, hours and evaluations to those in other districts and maintain evaluation files.

Preparing salary comparisons is not confidential unless it includes preparation for the District's proposals, a fact not in the record here. Maintaining evaluation files is not confidential in nature. To reflect the duties of the secretary I's-personnel office, the following testimony was given:

"Q. Would the personnel officer be involved in any ... if we were negotiating an issue such as how an evaluation procedure should be put together, would the personnel officer...

A. We would turn to the personnel officer for recommendations on that."

The evidence does not reflect that the personnel officer has prepared such proposals or that the secretary I's had access to it in the regular course of their duties.

"Q. Do you have confidential communications which you would be sending to the personnel officer?

A. Often.

Q. Are those...do those go through the secretaries?

A. My secretary would probably take these communications to one of the secretaries in that office.

Q. Do you ever receive from the personnel office any confidential communications involving negotiations?

A. Yes, we would.

Q. Would those be typed documents?

A. They very likely would be typed in that office.

Q. Would they be typed by either one of these two positions?

A. Yes."

This latter testimony is conclusionary in nature. While the person testifying uses the term "confidential", it is impossible from the record to make a determination that the materials sent and/or received are confidential within the meaning of Section 3540.1 (c).

Based on the foregoing, it is determined that the secretary I's-personnel officer are not confidential employees.

Secretary III - Business Manager

The District would exclude the position of secretary III - business manager. The employee organization would include it in the unit.

The business manager sits at the table and takes notes during negotiations. The record does not reflect that he keeps notes from confidential sessions.

The record reflects that:

- A. The business manager is very heavily involved, insofar as the budgetary aspects of any proposal may be concerned. One of the first things we do is to cost out proposals which are submitted so that we can place a dollar value on the request.

These materials, of course, are prepared by the business manager's secretary, insofar as placing them in a format for us to take to the board.

In Sierra Sands Unified School District,⁹ the Board indicated that calculating "the cost of proposals hardly suggests that they perform cost evaluations giving them information relating to their employer's employer-employee relations."

Here, the secretary III is typing the "cost out" of proposals. It is impossible to conclude from the record that she is preparing evaluations on the position of her employer in negotiations.

Therefore, the secretary III-business manager is found not to be a confidential employee.

Secretary IV - College Presidents

The District would exclude the secretary IV's - college presidents as confidential. The employee organizations would include these positions in the unit.

Each college president is responsible for receiving proposals in negotiations and commenting on them. Their responses are typed by the secretary IV's. Their secretaries type, send and receive communications relative to negotiations. The college presidents are part of management and attend executive sessions of the board relating to employer-employee relations. Because

⁹Sierra Sands Unified School District, EERB Decision No. 2, October 14, 1976.

the secretary IV's to the college presidents handle recommendations of the presidents relative to proposals in negotiations, the work they perform is confidential in nature.

Whether Certain Employees are Supervisory
Maintenance Supervisor - College of Marin

The District would exclude the maintenance supervisor-College of Marin as supervisory. CSEA and SEIU would include this position in the unit.

The maintenance supervisor at the college reports to the supervisor of plant operations and maintenance for whom he substitutes when the latter is absent.

The maintenance supervisor's job description indicates that he "plans, organizes, assigns, reviews, and supervises the work of journeymen in carpentry, paint, plumbing, electricity, automotive mechanics, and heating and air conditioning."

Testimony indicates he has no authority to hire or fire.

The Board has indicated that Section 3540.1(m)¹⁰ is

¹⁰Section 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.

written in the disjunctive and that possession of any one of the enumerated functions or duties will render an employee supervisory.¹¹ The only enumerated supervisory function in the record for the maintenance supervisor-College of Marin is the job description which indicates that he assigns work to certain other employees. The record does not indicate whether he assigns work in the supervisory sense or whether it is merely routine or clerical in nature.

The maintenance supervisor-College of Marin also substitutes for the supervisor of plant operations and maintenance, a position the parties stipulated was either management or supervisory. The record does not reflect the frequency or responsibilities involved in the substitution. The record does not sufficiently reflect that the maintenance supervisor-College of Marin performs any of the enumerated duties of Section 3540.1(m).

Based on the record, the maintenance supervisor-College of Marin is not a supervisory employee.

¹¹Sweetwater, supra; San Diego Unified School District, EERB Decision No. 8, March 1, 1977; Foothill-DeAnza Community College District, EERB Decision No. 10, March 1, 1977.

Supervisor of Gardeners/Groundskeepers

The District would exclude the supervisor of gardeners/groundskeepers as supervisory. The employee organizations would include this position in the unit.

The supervisor of gardeners/groundskeepers reports to the supervisor of plant operations and maintenance. According to the job description, this position is responsible for inspecting grounds, determining maintenance requirements and scheduling and assigning gardening and grounds personnel. The record reflects that this position directs where the crews will work each morning, works with the crews, verbally corrects the way in which crew members perform and evaluates employees.

Both the apparent broad discretion in assigning work and authority to evaluate are supervisory functions. The supervisor of gardeners/groundskeepers is a supervisory employee.

Custodial Supervisor

The District would exclude the position of custodial supervisor as supervisory. CSEA and SEIU would include this position in the unit.

The custodial supervisor at College of Marin reports to the supervisor of plant operations and maintenance. At Indian Valley College, the maintenance supervisor acts as the supervisor of plant operations and maintenance. The custodial supervisor plans, organizes, coordinates and supervises

work of the custodial staff, and is responsible for arranging work schedules, vacation periods, and planning the summer vacation work schedule according to the job description which was admitted in evidence. The record does not indicate whether these responsibilities are routine in nature or involve the exercise of discretion; i.e., does the custodial supervisor merely receive and transmit vacation data, or does he have authority to resolve conflicts to assure the necessary complement of employees on the job. Based on the scant record, it cannot be found that the custodial supervisor possesses any of the specifically enumerated duties of Section 3540.1(m). The custodial supervisor is not a supervisory employee.

Assistant Custodial Supervisor

The District would exclude the assistant custodial supervisor as supervisory. The employee organizations would include this position in the unit.

The assistant custodial supervisor reports to the custodial supervisor and substitutes for him in his absence. The assistant custodial supervisor assists the custodial supervisor in coordinating and supervising the work of the custodial staff, works with other custodians or replaces absent custodians. No rooms are assigned to him. He is responsible for distributing and occasionally ordering supplies and instructing other custodians on new methods. The assistant custodial supervisor works nights. If a member of the night crew had a grievance, the assistant custodial supervisor would make a notation on it

and present it to the supervisor. He presented a written notification of warning to an employee who was accused of an impropriety on the job on at least one occasion. The record does not reflect whether he merely delivered the notification or had prepared the notification.

Again, the scant record does not support a finding that the assistant custodial supervisor is responsible for any of the specifically enumerated functions of Section 3540.1(m). The assistant custodial supervisor is not a supervisory employee.

Campus Police Security Supervisor

The District would exclude the campus police security supervisor as supervisory. The employee organizations would include this position in the unit.

The campus police security supervisor is responsible "to supervise and personally participate in the enforcement of traffic and parking regulations, to enforce rules and regulations..., to investigate accidents and report thefts; to supervise other security officers," according to his job description. Testimony reflects that this classification patrols the campus, writes up reports, meets with the supervisor of plant operations and maintenance, directs the staff and sees that patrol vehicles are serviced. He draws up duty assignments and is involved in interviews for campus security positions. The record does not indicate whether he effectively recommends hiring. The duty assignments are presented to the supervisor of plant operations and maintenance for approval.

The record does not reflect whether the approval is cursory or involves reconsideration and changes in his scheduling.

Again, the record relies heavily on the job description and does not support a finding that the campus police security supervisor performs any of the specifically enumerated tasks in Section 3540.1(m). The campus police security supervisor is not a supervisory employee.

PROPOSED DECISION

It is the proposed decision that:

1. The public information officer, planning associate/ construction coordinator, a facilities coordinator and purchasing agent are not management employees as defined by Section 3540.1(g).

2. The secretary I-superintendent and secretary IV's-college presidents are confidential employees within the meaning of Section 3540.1(c).

3. The secretary I's-personnel officer and secretary III-business manager are not confidential employees within the meaning of Section 3540.1(c).

4. The supervisor of gardeners/groundskeepers is a supervisory employee within the meaning of Section 3540.1(m).

5. The maintenance supervisor-College of Marin, custodial supervisor, assistant custodial supervisor and campus police security supervisor are not supervisory employees within the meaning of Section 3540.1(m).

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

Unit A - "skilled trades and operations unit" including campus police and security supervisor, campus police officer, parking control officer, watchman, receiving clerk, custodial supervisor, assistant custodial supervisor, custodian, matron, gardener/groundskeeper, athletic equipment manager/trainer, pool maintenance man, maintenance supervisor-College of Marin, maintenance carpenter, maintenance electrician, maintenance heating and air conditioning mechanic, maintenance plumber, maintenance painter, maintenance mechanic, and maintenance man; excluding all other employees, including management, supervisory and confidential.

Unit B - including all classified employees not included in Unit A; excluding all employees included in Unit A, 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 Board's Rules and Regulations. If no party files timely exceptions, this proposed decision will be a final order on July 8, 1977, and a Notice of Decision will issue from the Board.

Within ten workdays after the employer posts the Notice of Decision, the employee organization shall demonstrate to the Regional Director at least 30 percent support in the above unit. The Regional Director shall conduct an election at the end of the posting period if the employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Dated: June 24, 1977

Sharrel J. Wyatt
Hearing Officer