

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BEVERLY HILLS UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	
)	
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)	Case Nos. LA-R-196
BEVERLY HILLS CHAPTER #328,)	LA-R-410
)	
Employee Organization,)	PERB Decision No. 63
)	
and)	August 8, 1978
)	
SERVICE EMPLOYEES INTERNATIONAL UNION,)	
LOCAL 660, AFL-CIO,)	
)	
Employee Organization.)	
)	
)	

Appearances; Paul Grossman, Howard C. Hay and Eric H. Joss, Attorneys (Paul, Hastings, Jonofsky and Walker) for Beverly Hills Unified School District; Robert L. Blake and Mary Ruth Gross, Attorneys for California School Employees Association, Beverly Hills Chapter #328; Howard Z. Rosen, Attorney (Geffner and Satzman) for Service Employees International Union, Local 660, AFL-CIO.

Before Gonzales and Cossack Twohey, Members.1/

DECISION

The attached hearing officer's proposed decision found an operations-support services unit 2/ and a residual unit

1/Chairperson Gluck took no part in the decision of this case.

²The parties agreed that instructional aides and noon duty supervisors should be excluded from whatever unit or units are found appropriate.

appropriate for the purpose of meeting and negotiating under the Educational Employment Relations Act (hereafter EERA).³ California School Employees Association, Beverly Hills Chapter #328 (hereafter CSEA) excepts to the proposed decision on the basis that it improperly places food services employees in the residual unit instead of the operations-support services unit.^{4/}

FACTS

In terms of job function, the district's classified employees in issue in this case are divided into three general groups. The employees placed into the operations-support services unit by the proposed decision perform job functions which provide a proper physical environment for the students. The clerical, accounting and other white collar employees placed into the residual unit by the proposed decision work in offices and do not perform physical labor. The food services employees whose unit placement is in dispute prepare food in the school kitchens, serve food to the students, and clean the kitchens and cafeteria after food is served.

³Gov. Code sec. 3540 et seq.

^{4/} No party excepted to the proposed decision's inclusion of CETA employees in the units. The Board has never ruled upon the proper unit placement of classified CETA employees. Since the inclusion of these employees is not inconsistent with the EERA and established Board policies, the issue of their proper unit placement is not addressed in this decision. See Centinela Valley Union High School District (8/7/78) PERB Decision No. 62 which enunciates a similar policy regarding stipulations of parties.

The work locations of the three groups vary, with the operations-support services employees working throughout the school facilities, the residual white collar employees working in offices, and the food services workers located in the cafeterias.

Nevertheless, there is substantial contact, interchange and interaction among district employees, most of which occurs between the operations-support services and food services employees. The custodians help the food services employees by operating the cash register during the lunch hour. In addition, they assist the food services employees with heavy work, clean up the cafeterias when the lunch hour ends, and help deliver food to the kitchens. Either a custodian or the driver takes cafeteria monies to the bank for food services. Maintenance employees, such as the head mechanic, electrician, and air conditioning and refrigeration repair person spend much time working on cafeteria equipment. In contrast, the only evidence regarding the white collar employees is that the clerical workers on occasion will operate the cafeteria cash register.

In this case, community of interest factors such as work hours, work year, educational requirements, supervision, compensation and benefits do not align the food services employees more with either the operations-support services or white collar employees.

DISCUSSION

In Sweetwater Union High School District⁵ the Board established three appropriate units: an instructional aides unit, an office-technical and business services unit, and an operations-support services unit. The operations-support services unit consisted of employees in the job areas of transportation, custodial, gardening, maintenance, food services and warehouse. Similar operations-support services units were established in Fremont Unified School District,⁶ San Diego Unified School District,⁷ Norwalk-La Mirada Unified School District,⁸ Sacramento City Unified School District,⁹ Shasta Union High School District¹⁰ and Greenfield Union School District.¹¹

⁵(11/23/76) EERB Decision No. 4.

⁶(12/16/76) EERB Decision No. 6.

⁷(2/18/77) EERB Decision No. 8.

⁸(9/16/77) EERB Decision No. 29.

⁹(9/20/77) EERB Decision No. 30.

¹⁰(10/25/77) EERB Decision No. 34.

¹¹(10/25/77) EERB Decision No. 35.

In the present case the evidence indicates that the food services employees should not be included in the residual white collar unit, and based on the evidence the Board finds that the operations-support services unit created by the proposed decision is inappropriate because it does not include food services employees.

The facts indicate that the job functions of the food services workers are more akin to those of the employees placed in the operations-support services unit than those of the other employees placed in the residual unit. Also, there is substantial contact, interchange and interaction among the food services employees and the operations-support services employees while there is comparatively little with the other residual unit employees.

Therefore, following Sweetwater and the other cases cited above, the Board finds that the proposed operations-support services unit with the addition of the food services employees is an appropriate unit, and the proposed residual unit with the exclusion of the food services employees is an appropriate unit.

ORDER

Based upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

1. The following units are appropriate for the purposes

of meeting and negotiating, provided that an employee organization becomes the exclusive representative:

Operations-Support Services Unit consisting of employees in the following job classifications: carpenter (including head carpenter); custodian (including athletic custodian); deliveryman; electrician (including head electrician); gardener (including head gardener); journeyman helper; locksmith and inspector; mechanic-head; painter (including head painter); plumber (including head plumber); security guard; warehouseman; and food services employees; excluding all other employees and excluding those positions agreed by the parties to be management, supervisory or confidential.

Office-Technical and Business Services Unit consisting of all employees not included in the operations-support services unit; excluding instructional aides and noon duty supervisors and excluding those positions agreed by the parties to be management, supervisory or confidential.

2. CETA employees shall be included in either the operations-support services unit or the office-technical and business services unit according to their job classifications or work function.

3. 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 in each unit if: (1) more than one employee organization qualifies for the ballot, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

The date used to establish the number of employees in the above units shall be the date of this Decision unless another date is deemed appropriate by the regional director and noticed to the parties. In the event another date is selected, the regional director may extend the time for employee organizations to demonstrate at least 30 percent support in the units.

By: Raymond J. Gonzales, Member Jerilou Cossack Towhey, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:)	
BEVERLY HILLS UNIFIED SCHOOL,)	Case No. LA-R-196
)	LA-R-410
Employer,)	
and)	
CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION, BEVERLY HILLS)	
CHAPTER NO. 328,)	
)	
Employee Organization,)	
and)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 660, AFL-CIO,)	
)	
Employee Organization.)	

Appearances: Paul Grossman and Howard Hay, Attorneys (Paul, Hastings & Janofsky) for Beverly Hills Unified School District; Mary Ruth Gross, Attorney for California School Employees Association; Howard Z. Rosen, Attorney (Geffner & Satzman) for Service Employees International Union, Local 660, AFL-CIO.

Proposed Decision by David Schlossberg, Hearing Officer.

PROCEDURAL HISTORY

The Beverly Hills Unified School District (District) is comprised of one high school, one continuation school and four elementary schools. Total student enrollment numbers approximately 5,800. There are approximately 200 classified employees in the District, including about 13 instructional aides.

On April 1, 1976, the California School Employees Association Beverly Hills Chapter No. 328 (CSEA) filed a request for recognition with the District as the exclusive representative for a unit consisting of all classified employees in the following major groupings of jobs: Food Services, Clerical and Secretarial, Operations and

Maintenance to include custodial/maintenance/gardeners; and excluding instructional aides, noon duty supervisors and those positions which could lawfully be declared management, supervisory or confidential.

On April 5, 1976, the District posted the notice of this request for recognition.

On April 6, 1976, Service Employees International Union, Local 660, AFL-CIO (SEIU) filed a request for recognition with the District as the exclusive representative for a unit designated as a School Operations Unit, to include the following positions: custodian, warehouseman, custodian-deliveryman, locker room attendant-custodian, gardener, head custodian, head gardener, security guard and stock clerk.

On April 20, 1976, SEIU filed an intervention to CSEA's request for recognition, seeking a unit designated as a Building Trades Unit, to include: head journeyman carpenter, head journeyman electrician, head journeyman mechanic, head journeyman painter, head journeyman plumber, journeyman carpenter, journeyman helper, journeyman mechanical/air conditioning, journeyman electrician, journeyman painter and journeyman plumber.

On May 10, 1976, the District advised the Educational Employment Relations Board (EERB or Board) that it doubted the appropriateness of both units proposed by SEIU; that it agreed with CSEA's proposed unit; and that it requested a hearing to determine the appropriateness of the units. On May 28, 1976, SEIU also requested that EERB conduct a unit determination hearing.

A hearing was held before Board Agent Frances A. Kreiling on September 13, 1976, in Beverly Hills.

Positions of the parties at the hearing

All parties agreed that instructional aides and noon duty supervisors should be excluded from whatever unit or units were found to be appropriate. In addition, there was no dispute regarding who should be excluded as management, supervisory or confidential employees.¹

The District and CSEA maintained their original positions in favor of a single unit for classified employees other than instructional aides, except the District wanted to exclude Comprehensive Employment Training Act (CETA) employees from the negotiating unit, while CSEA wanted to include them.

At the hearing, SEIU proposed three separate units: a "white collar" unit², a "blue collar" unit and a "food services" unit. The District objected to the units proposed by SEIU at the hearing on the basis that SEIU's showing of support consisted of employees who had

¹Noncertificated positions which the parties have stipulated are either management or supervisory are: director of food services, accountant/office manager and supervisor of maintenance and operations. Eight individuals which the parties stipulated by name as being confidential employees (their positions were not stated): Julia Maggs, Geraldine Reynolds, Bernice Skolnick, Hanna Slutsky, Virginia Carter, Mary Ellen Ellis, Gerry Ellis and Donald Warner.

²District's Exhibit 2 lists the job classifications of all the classified employees in the District. SEIU would include the following positions in its "white collar" unit: clerical, accounting and secretarial staff (including clerk, library assistant, bookkeeper, account clerk, receptionist and purchasing secretary); data processing and media technician; investigator; and musical accompanist. Included in SEIU's proposed "blue collar" unit are: carpenter (including head carpenter); custodian (including athletic custodian); deliveryman; electrician (including head electrician); gardener (including head gardener); journeyman helper; locksmith and inspector; mechanic-head; painter (including head painter); plumber (including head plumber); security guard; and warehouseman. The District represents that these groups of employees, along with the food services and CETA employees, constitute all of the classified employees whose unit placement is in dispute.

requested representation from SEIU in substantially different units (i.e., either in the School Operations Unit or the Building Trades Unit described in the request for recognition and intervention, respectively). This objection is discussed infra, at page 6.

SEIU's position on CETA employees was that their unit placement should be according to their work function within one of the three units it condended are appropriate.

In its posthearing brief, the District moved that the record be reopened to allow submission of affidavits from the superintendent and the assistant superintendent for business services pertaining to the educational requirements for classified positions and the designation of appropriate units for the purpose of meeting and conferring under the Winton Act.³ The ruling on this motion is discussed infra.

ISSUES

The issues are:

- (1) What is or are the appropriate units for purposes of meeting and negotiating?
- (2) Should CETA employees be included in the unit(s)?

DISCUSSION

The Motion to Reopen the Record

Included as part of the District's posthearing brief were affidavits signed by the superintendent and the assistant superintendent, business services attesting to the facts that (1) the District did not have any minimum formal educational requirements as a prerequisite to employment in any classified job classification and (2) the District

³ See former Ed.Code Secs. 13080-13090, repealed effective July 1, 1976.

had not established rules of unit determination with which employee organizations had to comply in order to be recognized under the Winton Act. The basis of the motion was the Board's holding in certain decisions rendered subsequent to the hearing in this matter which relied on these factors. SEIU objected to the Motion to Reopen the Record.

No statutory or case law was cited by either party regarding the propriety of reopening the record for additional evidence in an administrative hearing prior to the hearing officer's decision. However, reference can be made to Malibu Lake Mountain Club, Ltd. vs. Robertson, 219 Cal.App. 2d 181, 185 (1963), which pertains to the reopening of the record in a trial court:

The granting or denial of a motion to reopen lies in the discretion of the trial court and will not be reversed on appeal absent a clear showing of abuse of discretion...No showing was made that the testimony sought to be introduced was not known to plaintiff or was unavailable during the trial. Such a showing is a prerequisite to the granting of such a motion.

In the present case, there has been no showing that the evidence which the District seeks to introduce was unavailable at the time of the hearing. To allow the record to be reopened- several months after the hearing is held⁴ in order to receive evidence which was not introduced because the parties did not anticipate the nature of a subsequent Board decision would delay the processing of decisions⁵ and create uncertainty among parties and hearing officers as to whether a case was finally submitted. Accordingly, the Motion to Reopen the Record is denied.

4

The hearing was held on September 13, 1976; briefs were filed on approximately March 21, 1977.

5

If the affidavits were received into evidence, procedural due process would require that SEIU be given an opportunity to cross-examine the superintendent and the assistant superintendent, business services on the matters discussed in the affidavits.

SEIU's right to seek the "blue collar" unit proposed at the hearing

The District's objection to the amended "blue collar" unit proposed by SEIU is that this unit is a significantly different unit than those on which the showing of support was based, as the employees who signed SEIU's representation requests did so on the understanding that they would be represented in a School Operations Unit or a Building Trades Unit rather than together as a "blue collar" unit.

Nevertheless, it is found that the showing of support which formed the basis for the request for recognition for the School Operations Unit and the intervention for the Building Trades Unit can be used to maintain a position for a single unit of the same employees covered by the initially proposed units. In St. Louis Independent Packing Company, 169 NLRB 1106, 67 LRRM 1338 (1968), one union sought to represent a unit of production and maintenance employees excluding machinists, while another union sought to represent the machinists. These petitions were dismissed by the regional director on the basis that the units sought were not appropriate units. However, the National Labor Relations Board (NLRB) permitted the filing of a first amended petition wherein both unions sought certification as joint representatives of all the production and maintenance employees in a single unit, and, further, held that the authorization cards for each of the initially proposed units could be pooled to determine the sufficiency of the support for the amended proposed unit. The Board stated:

We are persuaded that when 30 percent of the employees in a bargaining unit have indicated a desire to be represented by one or the other of two unions, and the two unions then offer themselves as joint representatives of the employees, the petitioning unions have demonstrated enough employee interest in their attaining representative status to warrant holding an election.

Similarly, it follows that when one employee organization attains 30 percent support of the employees in each of two units, and then the organization offers to represent these employees in a single unit, sufficiency of support can be based on that which was filed with the units initially sought.

The only position included in SEIU's proposed "blue collar" unit which was not included in either the request for recognition for the School Operations Unit or the intervention for the Building Trades Unit is locksmith and inspector (there is only one such employee in the District). There are 82⁶ persons employed in the job classifications included in the proposed "blue collar" unit and 38⁷ of these employees signed SEIU's request for recognition or intervention. This is well above the 30 percent showing of interest required for an intervention (see discussion below). SEIU has standing to seek its proposed "blue collar" unit.

SEIU's right to seek the "white collar" and food services units at the hearing.

The first official concern which SEIU showed for any of the employees who are not included in its proposed "blue collar" unit was at the hearing, when it contended that the remaining employees should be placed into two other units. There is no evidence that SEIU has the support of any of the employees in its proposed "white collar" and food services unit or even that SEIU desires to represent these employees.

As the following analysis will show, a serious question is raised whether an employee organization can advocate a unit position at a hearing without having at least 30 percent support, or demonstrating at least some other kind of substantial interest, in the units it proposes.

^{6, 7} The 82 and 38 figures do not include CETA employees. There are nine CETA employees in various job classifications in the District, and two of them signed SEIU's request for recognition or intervention.

The Educational Employment Relations Act (EERA) is somewhat ambiguous as to whether an employee organization may contest the appropriateness of a unit sought by another organization without a 30 percent showing of support in the unit which it claims is appropriate. Section 3544.1(b) of the EERA states as follows:

3544.1. The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless:

* * *

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request ... If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, ... the ...board...shall conduct a representation election (emphasis added)..

Since an election is to be held if a competing claim is evidenced by 30 percent support, and since an election cannot be held if an appropriate unit has not been determined, it would appear that the words "competing claim" refer only to the situation where another employee organization desires to represent the same unit of employees described in the request. It follows, then, that the words "challenge to the appropriateness of the unit" includes the situation where another employee organization desires to represent an overlapping unit, that is, a unit which contains some, but not all, of the employees in the unit described in the request for recognition. Since the 30 percent support requirement does not appear to apply to a challenge to the appropriateness of the unit, it might be concluded that an employee organization seeking to represent an overlapping unit is not required to have 30 percent support.

⁸Govt. Code Secs. 3540 et seq.

However, Section 3544.5 of the EERA describes those parties who may initiate a petition with EERB to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit. Among these parties are a public school employer alleging that it doubts the appropriateness of the claimed unit and an employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 3544.1. There is no provision under Section 3544.5 for an employee organization to petition EERB to determine the appropriateness of a unit solely on the basis that the organization itself doubts the appropriateness of the unit, unless the words "competing claim" as used in Sections 3544.1 (b) and 3544.5 refer to an organization seeking to represent an overlapping unit. If the definition of "competing claim" is expanded to include overlapping units, then the 30 percent support requirement would also apply to overlapping units.

Thus, under the statute an organization seeking to represent an overlapping unit either has no right to request the EERB to determine the appropriateness of the unit, or it has this right only if it has 30 percent support in its own proposed unit.

While the EERA itself appears to be ambiguous as to the 30 percent requirement, the statute empowers the EERB to adopt rules and regulations to carry out the provisions and effectuate the purposes and policies of the EERA. These regulations are not ambiguous.

Regulation 32070(a) defines "intervening organization" or "intervenor" as an employee organization filing a competing claim of representation or a challenge to the appropriateness of the unit pursuant to Section 3544.1(b) of the EERA. Regulation 33070(b) requires that 30 percent support in the unit claimed to be appropriate shall be filed with the employer concurrent with the intervention.

Clearly, there is no regulation or administrative procedure which permits an employee organization to intervene for an alternative unit unless it submits 30 percent support for its own proposed unit.

Perhaps it might be argued that SEIU's proposed "blue collar," "white collar" and food services units constitute amendments to its initial request for recognition and intervention under Regulation 33100.¹⁰ However, if viewed in this manner,¹⁰ the amendments are untimely, as they would have had to have been filed prior to the District's decision¹¹ not to grant recognition. In any event, it is difficult to perceive SEIU's proposed "white collar" and food services unit as amendments to its initial request for recognition and intervention, because they do not add job descriptions to a proposed unit (i.e., the initially proposed School Operations Unit and the Building Trades Unit).

10

The emergency regulations which were in effect prior to July 1, 1976 did not provide for amendments to a request for recognition or intervention.

11

See Regulation 33100(b). The District's May 10, 1976 letter to EERB effectively constituted the employer's decision in accordance with Regulation 30022, which was then in effect.

The only basis, then, for SEIU's right to advocate a unit position for employees it has not requested recognition of or intervened for would accrue from its rights as a party to the unit determination hearing. Except for the basic due process rights provided for in Regulation 32180, the regulations are silent with respect to a party's substantive right of participation in the hearing. This question is resolved by comparing the rights given to an organization which seeks to join the hearing as a party. On this point Regulation 33340 states as follows:

33340. Application to Join Hearing As A Party.
The Board may allow an employee organization which did not file a timely request for recognition or intervention to join the hearing as a party, provided:

- (a) The employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the unit described in the request for recognition or an intervention; and
- (b) The application is accompanied by the proof of the support of at least one employee in the unit described by the request or intervention; and
- (c) The Board determines that the employee organization has a substantial interest in the case and will not unduly impede the proceeding.

This regulation is sometimes referred to as the "one card rule" because an employee organization might become a party to the hearing with as little support as one authorization card. However, subdivision (c) also requires that the employee organization have a substantial interest in the case. It seems incongruous that an employee organization can become a party with only one card and yet also be required to have a substantial interest. To interpret the one card rule as allowing an employee organization to advocate a position regarding the unit(s) with

the support of only one authorization card in its proposed unit(s) would be to ignore the "substantial interest" requirement of the regulation.

The one card rule and the substantial interest requirement can be harmonized when read together with Regulation 33480, which states as follows:

33480. Eligibility to Appear on Ballot. Any employee organization which was a party to the representation may appear on the election ballot provided that during the 10 workday posting period of the notice of Board decision the regional director is satisfied that the organization has evidenced at least 30 percent support in the unit found to be appropriate by the Board. (emphasis added)

Thus, it is reasonable to interpret Regulation 33340 to mean:

1. An employee organization may become a party to the hearing for the limited purpose of being allowed an opportunity to qualify for the ballot by submitting proof of support of as little as one employee in any of the units which are the subject of a request for recognition or intervention.
2. An employee organization may become a party to the hearing for other purposes only if it has a substantial interest in the case and it will not unduly impede the proceeding.

Thus, it is concluded that SEIU did not have standing to maintain a different unit position unless it could have demonstrated a substantial interest in the unit or units it advocated at the hearing.

It is not necessary for the hearing officer to determine what kind of interest would amount to "substantial interest" in order for SEIU to have standing to advocate the "white collar" and food services units, because the fact is that SEIU demonstrated no interest in either of these two units. Accordingly, SEIU did not have standing to seek either a "white collar" or a food services unit at the hearing.¹²

¹²It might be argued that where the substantial interest is based solely on the degree of support for the organization, "substantial interest" should be interpreted to mean at least 30 percent support, as this is what would be required for the organization to intervene in the case during the initial posting period following the request for recognition.

Hereinafter, the proposed "blue collar" unit will be referred to as the "operations-support services" unit. Those classifications not included in this operations-support services unit will be referred to as the residual unit.

The presumptively appropriate units

Section 3545(a) of the EERA requires the determination of the appropriateness of a negotiating unit to be based on three factors:

(1) the community of interest between and among the employees; (2) the established practices of the employees, including the extent to which they belong to the same employee organization; and (3) the effect of the size of the unit on the efficient operation of the school district.

13

In a series of cases involving classified employees, the EERB, relying on the community of interest criterion, has held that three units are presumptively appropriate: (1) a unit of aides, except for clerical aides; (2) an office-technical and business services unit; and (3) an operations-support services unit (which includes food

13

See Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976; Fremont Unified School District, EERB Decision No. 6, December 16, 1976; San Diego Unified School District, EERB Decision No. 8, February 8, 1977; Foothill-DeAnza Community College District, EERB Decision No. 10, March 1, 1977; and Sacramento City Unified School District, EERB Decision No. 30, September 20, 1977 (in this decision the Board ruled that a fourth unit for security officers was also appropriate).

services employees). Since aides are not in dispute in this case, the presumption as applied here would result in two units—a unit comprised of operations-support services employees, including the food services employees, and a unit consisting of the residual employees minus the food services personnel.

The question presented is whether the presumption that these are the two appropriate units has been rebutted in favor of either the comprehensive unit sought by the District or by the operations-support services unit proposed by SEIU.

The District's argument for a comprehensive unit

14

In its posthearing brief the District advances several arguments relating to all three Section 3545(a) criteria to support its contention that a comprehensive unit is appropriate,

With respect to the community of interest criterion, the District contends that there is a constant integration of work function among employees in that all employees "pitch in" to do whatever job needs to be done; that there are no restrictions regarding who can apply for which positions; that there are no specific educational requirements for any classified position; that there is a history of transfers between classifications; that the positions are funded from the same general fund (except for CETA employees); that there is a great deal of uniformity among all employees in their hours of employment; that most

14

CSEA did not file a posthearing brief.

of the employees are invited to participate in various social activities; that the principal is the common supervisor of all employees who work at a particular school site; that all classified employees are on the same salary schedule, with various pay grades cutting across all different job classifications; that all classified employees receive the same fringe benefits; and that they all have the same grievance procedure.

The hearing officer makes the following observations about these contentions:

1. For the most part, the interchange of job functions among the employees occurs among those who would be in the presumptively appropriate operations-support services unit—that is, gardeners assisting custodians, custodians assisting food services workers, etc. However, at some of the elementary schools, some of the secretarial staff will regularly serve food during the nutrition breaks and work at the cash register during the lunch hour; at the high school two or three clerical personnel work in the cafeteria during the lunch hour. The District's driver or a custodian frequently makes bank runs for the accounting department. At fund raising activities such as carnivals the employees work together to make the activity a success.

2. Almost all of the job transfers among classifications have been between positions which would be included in the presumptively appropriate operations-support services unit. Thus, while there have been several job changes from custodial to maintenance, gardener to custodial, food services to custodial, etc., there is only one current employee who moved from an operations-support services position to an office-technical and business services classification (this was a food services worker who became a clerical employee).

3, Most of the employees in both the proposed operations-support services and residual classifications have the same work hours (7:30 a.m. to 4:00 p.m.). However, work hours also vary within the same job classification (e.g., there are day and night custodians), and some food services employees work only part-time. Those in the proposed operations-support services unit are 12-month employees, as are those clerical employees who work at the District office, the high school and one of the elementary schools. Other clerical employees are 10-month employees, and food services workers are nine-month employees. Overall, the situation in Beverly Hills is not significantly different from that noted by the Board in Sweetwater.

4. The school principal is the primary supervisor of almost all of the employees who work at one school site. He or she routinely gives instructions to custodians, gardeners and office workers, completes written evaluations, and has the authority to effectively recommend transfers or promotions of classified employees. However, in Fremont, the Board noted that some of the custodians, gardeners, grounds helpers and office-technical and business services employees reported to the principal. Thus, it is not too significant that the principal supervises those who work at his or her school site. Others who are employed at the District office and the craftsmen (carpenters, painters, electricians, mechanics, plumbers and the locksmith and inspector) have different lines of supervision. The first common supervisor of all classified employees in terms of the District's organizational chart is the assistant superintendent, business services. The fact that most of the employees work at one particular

school site has not been a significant factor in the Board's precedential decisions.

5. Some of the other factors brought out by the District do not carry much weight in establishing a community of interest among all the employees. The social activities consist of the annual Christmas breakfast for all classified employees and the two parties held at the District office each year. The all-classified-employee meetings occur one or two times a year to discuss such things as the installation of the telephone system or health benefits.

With respect to the established practices of the employees, the evidence establishes that CSEA has represented classified employees in the District as a comprehensive unit since 1965 and that its membership has consisted of a broad cross-section of job classification. Since 1972, the CSEA Salary Committee and the District have met and conferred under provisions of the Winton Act on the committee's salary and fringe benefits proposals. Although most the CSEA members who signed the proposals were employed in classifications which would be included in the presumptively appropriate operations-support services unit, there have been at least two secretaries and one library clerk who signed these proposals. The salary proposals related to all classified employees in the District.

The District contends that the employees desire to be represented in a comprehensive unit. In support of this contention, the District prepared a summary of the expression of employee interest, which was admitted into evidence as District's Exhibit 2. The summary illustrates, by job classification, the number of persons employed as of

the time of the hearing who had authorized a CSEA dues deduction, the number who had signed CSEA's request for recognition and the number who had signed SEIU's request for recognition or intervention. The impact of this summary, in light of other testimony, is discussed infra, at page 20.

With respect to the efficiency of operations criterion, the evidence contained in the record established that the District has the fifth lowest number of administrators statewide in terms of the ratio between administrators and teachers. The assistant superintendent, business services' characterization is that the District is operating "with a bare bones staff." He foresees the possible need for an additional staff member if there is a fragmentation of employees into more than one unit, as well as a general increase in workload and expense if there is more than one unit.

Hearing officer's conclusion regarding the appropriateness of a comprehensive unit.

Certainly, there is a stronger basis for finding a comprehensive unit to be appropriate in this case than there was in the Board's precedential decisions. All the classified employees are on the same salary schedule, with pay grades cutting across various job classifications in both the proposed operations-support services and residual units; the employees all receive the same fringe benefits; and they have the same grievance procedure (sometimes the Board's precedential decisions are silent on these points). There is a degree of interchange

of work function cutting across the presumptively appropriate units. The hours of employment are more nearly the same than was the situation in the precedential cases. Most significantly, the size of the District in this case is much smaller than those school districts under consideration by the Board.¹⁵

Nevertheless, a review of the Board's precedential decisions indicates that the primary factor relied on by the Board in establishing the presumptively appropriate units is the job function of the employees.

Office technical and business services employees have a community of interest among themselves primarily because they perform clerical and recordkeeping work rather than physical labor. Operations-support services employees have a community of interest among themselves primarily because they all are involved in providing a proper physical environment and support services for students. This is not to say that the other factors are not important. But without further guidance from the Board, the other factors cited by the District--some of which may or may not be significantly different from the situation in the Board's precedential decisions--taken together, are not sufficient to warrant a finding that there is a community of interest among all the employees in dispute. The District is small in size, but not so small that the size itself suggests a single community of interest, as it would if there were only one work site and a substantially lesser number of employees.

15

In Sweetwater, there were 11 sites, 29,227 students and 672 classified employees; in Fremont, there were 48 sites, 32,759 students and approximately 346 classified employees; in San Diego, there were 164 sites, 4,220 classified employees and an average daily attendance of 125,815; in Foothill-DeAnza, there were approximately 576 classified employees; and in Sacramento, there were 76 sites, approximately 42,642 students and 1,995 classified employees. In Beverly Hills, there are six sites, 5,800 students and approximately 200 classified employees.

The evidence regarding representation practices predating the EERA and current employee preference in representation is inconclusive. With respect to the former, the Board has given little weight to representation practices under the Winton Act because of the unspecified and possibly unilateral nature of the unit designation procedure which existed in the school district (see Sweetwater, at p. 4). The evidence in the record is no different in this case.

Although the summary submitted as District's Exhibit 2 establishes that 124 of the 187 employees signed CSEA's request for recognition, it can hardly be concluded that these 124 persons have actually stated a preference for representation by CSEA in a comprehensive unit rather than in two units. The record is lacking regarding the employees' preference for a single unit. The evidence regarding the extent of actual membership in CSEA is difficult to evaluate. The president of the CSEA chapter testified that there were approximately 120 members in CSEA, of whom perhaps 90 percent had authorized dues deductions from their paychecks. In fact, 91 employees had authorized dues deductions as of the time of the hearing (according to District's Exhibit 2), which is either 75.8 percent of 120 members or is 90 percent of 101 members. If there are as few as 101 members in CSEA, this would be only 54 percent of the total number of employees whose unit placement is in dispute. The 54 percent figure would be lower if part of CSEA's membership consisted of instructional aides (this point was not clarified on the record).

Overall, the evidence produced on established representation practices is not, in the hearing officer's opinion, a significant factor in this case.

The inference to be drawn from the testimony regarding the low ratio of administrators to teachers is that the increased administrative time spent on negotiations will have a greater impact in this district than it would in other school districts. The Board has recognized that there are legitimate concerns which a public school employer might have about excessive fragmentation of units. However, the Board has consistently held that the three presumptively appropriate units strike the proper balance between effective representation and the effect on the school district's operations. Although the Board has indicated that the number of employees in a school district may be so small that a finding of anything other than a comprehensive unit would itself adversely affect the efficient operations of the district, the number of employees in the presumptively appropriate units in this case, or even in the operations-support services unit proposed by SEIU, is not so small as to be a consideration.

16

The hearing officer concludes that the facts pertaining to the community of interest, established representation practices and efficiency of operations criteria do not rebut the presumption of separate operations-support services and office-technical and business services units in favor of a single unit for these classified employees.

16

See Greenfield Union High School District, EERB Decision No. 35, October 25, 1977. In that case there were 110 classified employees. The Board upheld the hearing officer's finding that an operations-support services unit of 48 employees and a residual unit of 62 employees were appropriate. In Beverly Hills, there are 82 employees in SEIU's proposed operations-support services unit, 96 in the residual unit (including 32 food services employees) and nine CETA employees whose job classifications are not reflected in the case record.

The appropriateness of SEIU's proposed operations-support services unit

The next question raised is whether the operations-support services unit proposed by SEIU is an appropriate unit. It differs from the presumptively appropriate unit in that it does not include food services employees.

In Foothill-DeAnza the Board found a "skilled crafts and maintenance" unit to be appropriate. This unit included those kinds of classifications which had been included in the operations-support services unit established by the Board in Sweetwater. However, the unit did not include food services employees because they were not sought to be included in "skilled crafts and maintenance" unit. The Board stated:

The remaining classified employees in Foothill-DeAnza Community College District shall constitute a second negotiating unit. No party presented evidence indicating that the residual unit was inappropriate and we therefore do not find it to be inappropriate.¹⁷

Although this case differs from Foothill-DeAnza in that SEIU did present evidence to show that food services employees should not be included in the same unit as the office-technical and business services employees, it has previously been found that SEIU does not have standing to advocate a position about their unit placement. The District and CSEA are presumed not to object to the inclusion of the food services employees in a residual unit with office-technical and business services employees because it did not maintain a backup position to their
18
proposed comprehensive unit.

¹⁷ Foothill-DeAnza, at p. 4. Also see Antioch Unified School District, EERB Decision No. 37, at p. 7, November 7, 1977

¹⁸ See Antioch, fn. 14, at p. 7.

Based on Foothill-DeAnza, then, the operations-support services unit sought by SEIU is found to be an appropriate unit. Those employed in the classifications included in the unit (see footnote 2, supra) have a community of interest among themselves in that they all are responsible for providing a proper physical environment and support services for students. The unit does not include employees who would be placed in the other presumptively appropriate units.

The residual unit includes all other classified employees whose unit placement is in dispute at this hearing, including the food services employees.

CETA employees

The only evidence presented at the hearing about CETA employees is that there are nine of them employed in various job classifications and that they are funded by the federal government, and if such funding ceases the CETA employees would be terminated by the District.

There are no Board decisions pertaining to the unit placement of CETA classified employees. The Board has held that CETA Program teachers do not have a community of interest with and therefore should be
19
excluded from the unit of regular classroom teachers. The basis of this ruling was that the CETA Program was an entirely separate program from the regular school program, as evidenced by the difference in teacher qualifications, termination and reemployment rights, supervision, the subjects taught, the students taught, work hours, wages, benefits
20
and funding.

¹⁹ New Haven Unified School District, EERB Decision No. 14, March 22, 1977.

²⁰ Ibid, at 12.

In this case, however, there is no evidence that the CETA employees are distinguishable from the other classified employees in any way other than the fact that funding for their positions is by the federal government. The sole basis for the District's position to exclude CETA employees from the units appears to be that their employment is of indeterminate duration. However, the Board has held that the fact that employees may only be temporary is not itself sufficient to exclude them from the unit with which they otherwise share a community of interest.²¹

The hearing officer is aware of the NLRB decisions which have excluded CETA employees from an otherwise appropriate unit,²² but without a more developed record and argument (there is none in the District's brief on this issue) it is inappropriate to establish a per se rule that CETA employees should be excluded from units of other classified employees.

Accordingly, the CETA employees are included in either the operations-support services unit or the residual unit, depending upon their job classifications or work functions.

21

Belmont Elementary School District, EERB Decision No. 7 at 5-6, December 30, 1976; Grossmont Union High School District, EERB Decision No. 11 at 10, March 9, 1977.

²²See Clark County Mental Health Center, 225 NLRB No. 105, 92 LRRM 1545 (1976); Kent County Association, 227 NLRB No. 222, 94 LRRM 1655 (1976). But cf. Monroe County Board of Commissioners, XI MERC L.O. 817 (Mich. 1976) and Town of Pepperell, 3 MLC 1164 (Mass. 1976), which rejected the NLRB analysis and included CETA employees in the unit.

PROPOSED DECISION

It is the Proposed Decision that:

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

(1) Operations-Support Services Unit consisting of employees in the following job classifications: carpenter (including head carpenter); custodian (including athletic custodian); deliveryman; electrician (including head electrician); gardener (including head gardener); journeyman helper; locksmith and inspector; mechanic-head; painter (including head painter); plumber (including head plumber); security guard; and warehouseman; excluding all other employees and excluding those positions agreed by the parties to be management, supervisory or confidential.

(2) Residual Unit consisting of all employees not included in the operations-support services unit; excluding instructional aides and noon duty supervisors and excluding those positions agreed by the parties to be management, supervisory or confidential.

2. CETA employees shall be included in either the operations-support services unit or the residual unit according to their job classifications or work function.

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 EERB's Rules and Regulations. If no party files timely exceptions, this Proposed Decision will become final on December 7, 1977.

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 in each unit if (1) not more than one employee organization qualifies for the ballot, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.*

The date used to establish the number of employees in the above units shall be the date of this decision unless another date is deemed appropriate by the Regional Director and noticed to the parties. In the event another date is selected, the Regional Director may extend the time for employee organizations to demonstrate at least 30 percent support in the units.

DATED: November 25, 1977

____ David Schlossberg,
Hearing Officer

*Voluntary recognition requires majority proof of support in all cases. See Gov. Code Sec. 3544 and 3544.1.