

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MONTEREY PENINSULA COMMUNITY
COLLEGE DISTRICT,

Employer,

and

MONTEREY PENINSULA COLLEGE TEACHERS
ASSOCIATION, CTA/NEA,

Employee Organization,

and

FACULTY ASSOCIATION OF MONTEREY
PENINSULA COLLEGE,

Employee Organization.

Case No. SF-R-481

PERB Decision No. 76

October 16, 1978

Appearances: Keith V. Breon, Attorney (Breon, Galgani & Godino) for Monterey Peninsula Community College District; Duane B. Beeson, Attorney (Brundage, Beeson, Tayer & Kovach) for Monterey Peninsula College Teachers Association, CTA/NEA; Elliot Roberts and Dr. Whitney Baines for Faculty Association of Monterey Peninsula College.

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

DECISION

On November 17, 1977 Public Employment Relations Board (hereafter PERB or Board) hearing officer Barbara Bardach issued a proposed decision finding that division chairpersons in the Monterey Peninsula Community College District (hereafter District) are not supervisors within the meaning of section 3540.1(m) of the Educational Employment Relations Act¹ (hereafter EERA) and that parks

¹The Educational Employment Relations Act is codified at Gov. Code sec. 3540 et seq. All further statutory references are to the Government Code unless otherwise indicated.

and recreation instructors are appropriately included in a unit of certificated personnel of the District. The District and the Faculty Association of Monterey Peninsula College (hereafter FAMPC) filed timely exceptions to the hearing officer's finding that parks and recreation instructors share a community of interest with members of the certificated unit for the District. Exceptions by the Monterey Peninsula College Teachers Association, CTA/NEA (hereafter MPCTA) to the finding of the hearing officer that division chairpersons are not supervisors were rejected as being untimely filed.⁴

On May 17, 1977 the District, MPCTA and FAMPC entered a consent election agreement stipulating to the appropriateness of a unit of all certificated positions but excluding specified positions, and further stipulating that ballots cast by persons classified as division chairpersons, parks and recreation instructors, and fire science instructors would be challenged, and that if the challenged ballots were sufficient in number to determine the outcome of the election, a representation proceeding of the Board would be held to resolve their status.

²For the reasons set forth in Monterey Peninsula Community College District (5/16/78) PERB Order No. Ad-32, we rejected the exceptions of MPCTA as untimely filed. Nonetheless, we have exercised our power to sua sponte review the status of division chairpersons. See section 3541.3(a), and Cal. Admin. Code, tit. 8, sec. 32320(a). It is the responsibility of PERB to protect public policy by ensuring the appropriateness of units for meeting and negotiating. See sections 3540 and 3544.7. It is particularly important that the Board ensure that positions which are specifically excluded from certificated units by statute, such as supervisors, are not improperly included in such units. A similar position is taken by the National Labor Relations Board in holding that otherwise binding "Norris-Thermador" lists of employees eligible for certification elections may be challenged for inclusion of persons holding positions excluded from the unit by the National Labor Relations Act itself, such as supervisors. See Norris-Thermador Corporation (1958) 119 NLRB 1301 [41 LRRM 1283]; Lake Huron Broadcasting Corporation (1961) 130 NLRB 908, 909 [47 LRRM 1443, 1444]; Fisher-New Center Company (1970) 184 NLRB 809, 810 [74 LRRM 1609, 1610]. While a party's failure to submit an exception to a decision of a hearing officer waives that party's right to assert that exception, it is incumbent on the Board not only to review those portions of unit determination cases properly appealed, but to examine appealed cases fully, and, when appropriate, review findings which were not appealed. See Cal. Admin. Code, tit. 8, secs. 32300(c) and 32320(a); Rules and Regulations and Statement of Procedure, Series 8 of the National Labor Relations Board, sec. 102.48(b).

In the election of May 31 and June 1, 1977, nine ballots were cast by division chairpersons, one ballot was cast by a parks and recreation instructor, and no ballots were cast by fire Science Instructors. The challenged ballots are sufficient in number to determine the outcome of the election.³

The District and FAMPC urge the inclusion of division chairpersons and exclusion of parks and recreation instructors while MPCTA urges exclusion of division chairpersons and inclusion of parks and recreation instructors. The parties stipulated that the Board's determination of inclusion or exclusion of parks and recreation instructors would apply to fire science Instructors as well.

We affirm the hearing officer's decision including division chairpersons except as modified herein and reverse the decision including parks and recreation instructors. As no challenged ballots were cast by fire science instructors, we express no opinion on the appropriateness of including them in a unit of certificated employees of the District.

FACTS

~~Division Chairpersons~~

The District has one official campus in Monterey and offers a Community Education Program at various locations around the District. The faculty is divided into 10 divisions. As one division is administered by the director of continuing education who was excluded from the unit by stipulation of the parties on May 17, 1977, there are nine division chairperson positions in dispute. Divisions (such as Humanities, Life Sciences, and Social Science) contain one or more departments (such as English, History, and Biology) and range in size from two to 27 full-time faculty.

Division chairpersons chair the selection committee for hiring of full-time faculty members within their division. The committee

³The Tally of Ballots shows that there were 412 eligible voters, no void ballots, 176 ballots cast for MPCTA, 167 ballots cast for FAMPC, 9 ballots cast for no representation, and 10 challenged ballots.

is composed of representatives from the administration and various faculty groups. The precise nature of the faculty groups is not apparent from the record; however the record indicates that the division chairperson recommends a representative from each group, and final selection of the members of the committee lies with the members of the groups represented. Three candidates selected by the selection committee are presented to the college president. The president and selection committee then choose a single nominee who is recommended for hire to the governing board of the district.

Division chairpersons forward department recommendations for hiring of part-time faculty to the Office of Instruction. There is some evidence that on those infrequent occasions when a part-time position is available in the field of expertise of a chairperson, some chairpersons become actively involved in the selection of a person for recommendation to the Office of Instruction for hire.

Chairpersons have no authority to transfer or suspend employees, nor do they independently recommend discharge of part-time faculty though they may convey the recommendation of the involved department to the administration.

Division chairpersons serve as advocates for those full-time faculty members whose work is reviewed by an evaluation committee when a biennial student evaluation reveals a problem with the faculty member. They also chair the committee which evaluates newly hired contract faculty who lack tenure, but they have no greater voice in the recommendations of that committee than any other member of the committee.

It is the responsibility of the division chairpersons to ensure that the departments conduct evaluations of part-time faculty. Part-time faculty are evaluated by a full-time faculty member selected by their department chairperson. Division chairpersons themselves are selected to evaluate part-time faculty members, but their recommendations are accorded no more weight than those of other faculty members. Chairpersons are themselves evaluated as teaching faculty members.

Though division chairpersons are shown in the Faculty Handbook as the first step in the grievance procedure, the record reveals that chairpersons are not in fact part of the grievance procedure. One chairperson was not aware that she was listed as part of the grievance procedure; another chairperson testified that he had not known what to do on the one occasion when a grievant had come before him. There is no evidence that a division chairperson has ever exercised authority to resolve a grievance or has maintained records of a grievance proceeding.

Chairpersons have no authority to impose discipline, though they serve as a go-between when the administration has a complaint with a faculty member. Although chairpersons are informed of faculty absences and may investigate the reasons for prolonged or frequent absences, they have never recommended loss of pay or other discipline for unexcused absences. Nor is there evidence that division chairpersons have ever denied travel and leave requests though their approval and recommendation to the administration is required.

Chairpersons review budget, class assignment, class size and curriculum recommendations of the departments, but these recommendations are never changed by chairpersons. Their review is largely a clerical check for accuracy.

Division chairpersons receive from 20 to 50 percent release time from teaching to perform the administrative duties discussed herein. They are assigned an additional five days of work a year at the beginning of the school year for administrative work for which they receive additional pay, but they receive no stipend above their faculty salary for their chairperson duties. Chairpersons are not assigned special office space during their tenure as chairperson.

Division chairpersons are not required or requested to hold an administrative or supervisory credential. They are not precluded from serving on the Faculty Senate as are members of the administration, and at least one division chairperson was active on the Faculty Senate in 1977 and one past division chairperson was simultaneously President of the Faculty Senate.

Chairpersons must be mutually acceptable to the faculty of their division and the administration. Division full-time faculty elect their choice for chairperson and the administration either confirms or rejects that choice. Unlike other administration officials, acceptance of a division chairperson is not voted on by the District's governing board. Terms are for three years and division chairpersons may be and have been reelected. Division chairpersons are never hired from outside a division.

Evaluations of their performance as division chairpersons are conducted by committees of faculty selected at division faculty meetings. Evaluation forms are distributed to all part- and full-time faculty in the division, and the administration is informed of the results of the evaluation.

Both the administration and the faculty can remove a division chairperson before completion of the three year term. No instance of a mid-term removal by the administration has been revealed, but on one occasion the mid-term resignation of a division chairperson was eventually compelled subsequent to loss of a vote of confidence at a division meeting.

From 12 to 15 times a year the division chairperson Caucus meets. It consists of the division chairpersons, the librarian, the head counselor, several administrators and the dean of instruction who chairs the meetings. The meeting serves largely to disseminate the administration's views and policies to the division chairpersons, who in turn inform their divisions at division faculty meetings and report back to the Caucus. Administration policy is never formed or recommended by vote at the Caucus meetings.

Division faculty meetings are chaired by the chairpersons and held at regular intervals which vary from weekly to monthly from division to division. At these meetings the chairpersons convey administration policies and solicit responses to be carried back to the Caucus.

Two chairpersons testified that they viewed themselves as faculty advocates in relations with the administration, and there was evidence that chairpersons in the Division chairperson Caucus

had been opposed to creating a stipend for chairpersons as they felt it would tend to differentiate them from the remaining faculty.

Each division has a secretary who is primarily responsible for division business but who also does work for division faculty. Chairpersons supervise and direct the work of the division secretaries and formally evaluate them twice a year. Little evidence on selection of the division secretaries was presented. In one division the secretary was selected by a series of committees involving the entire division faculty in which the vote of the chairperson carried no more weight than that of other faculty members. There was no evidence in the record on procedures for termination of division secretaries.

DISCUSSION

EERA section 3540.1(m) defines a supervisory employee as:

...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.

In Los Rios Community College District⁴ we determined that, despite long-standing traditions of collegiality and shared authority within institutes of higher education, division chairpersons held an allegiance to the administration not required of other faculty and exercised substantial independent control over critical aspects of faculty responsibilities. In those circumstances we concluded that division chairpersons were supervisory employees.

None of the indicia of allegiance to the administration present in Los Rios are present in this case. Unlike Los Rios, no stipend

⁴(6/9/77) EERB Decision No. 18.

in addition to their regular teaching salary is paid division chairpersons,⁵ nor are division chairpersons requested or required to hold supervisory or administrative credentials. In Los Rios division chairpersons were selected by the administration, while division chairpersons in this District must be mutually acceptable to the faculty and the administration. They are selected by the faculty and confirmed by the administration; they are evaluated by the faculty; and they can be removed by either the administration or faculty.⁶ Unlike Los Rios, the Faculty Senate is open to division chairpersons in the District. There was testimony that division chairpersons considered it their role to represent the faculty rather than the administration.⁷

Nor do division chairpersons in the District exercise independent effective control of supervisory functions over the faculty. Rather, they routinely facilitate and collegially participate in hiring and evaluation of faculty.⁸ When evaluations reveal problems, they serve as faculty advocates by attempting to justify or explain the problems to the administration. They may independently evaluate part-time instructors who are in their field, but their evaluations are accorded no more weight than those of other full-time faculty. Chairpersons in the District do not exercise the authority to resolve grievances. Nor do they, as in Los Rios, recommend loss of pay for unexcused absences.

⁵See Fairleigh Dickinson Univ. (1976) 227 NLRB 2391 [94 LRRM 1044].

⁶Northeastern University (1975) 218 NLRB 247, 250 [89 LRRM 1862, 1867].

⁷Northeastern University, supra, 218 NLRB at 251 [89 LRRM at 1868].

⁸Rosary Hill College (1973) 202 NLRB 1137 [82 LRRM 1768].

They have no independent effective control of the proposed department budgets; supply, travel, and leave requests; class assignments, class size, or room assignments. Thus they have no ability to assign or direct faculty work.⁹

Their involvement in supervision of faculty is either of a routine nature, or if it involves their judgment, is conducted collegially with the other faculty members of the division.

The mere fact that division chairpersons have secretaries does not make them supervisors.¹⁰ Moreover, division secretaries do the work of all division faculty to the extent that there is time once division work is completed, and the only evidence in the record indicates that division secretaries are selected collegially. In these circumstances, the fact that chairpersons supervise classified personnel in their daily activities does not establish chairpersons as supervisors, for purposes of exclusion from a unit of certificated personnel.¹¹

As division chairpersons exercise no supervisory control over the members of the requested unit, and only minimal direction of the work of personnel not in the requested unit, they are not supervisors within the meaning of the EERA and may not, on that basis, be excluded from the requested unit.

FACTS

Parks and Recreation Instructors.

The Basic Peace Officer Program (hereafter Basic POP) was begun by the Parks Department in September, 1973 and an Advanced POP course was begun subsequently. Both programs are conducted at the Parks Department's Center for Continuous Learning in Pacific Grove, California. Basic POP was begun to provide peace officer training to Parks Department personnel with duties requiring designation as a State Parks Peace Officer under the mandate of the state penal code. Standards for the training are uniformly set by the California

⁹Fordham, supra, at 1182.

¹⁰¹⁰Fordham, supra at 1183.

¹¹¹¹Washington Unified School District (6/27/78) PERB Decision No.56; See Fordham, supra, at p. 1183; Fairleigh Dickinson, supra at p. 1047.

Commission on Peace Officer Standards and Training (hereafter POST). Advanced POP was designed as a refresher for personnel with several years experience.

A course syllabus for Basic POP is issued by the Parks Department. The Basic POP course consists of 240 hours of class time in six weeks typically from 8:00 a.m. to 5:45 p.m. five days a week. The program includes classes covering such topics as Criminal Law, Search and Seizure, Narcotics, Defense Tactics, Crowd Control, Sex Crimes, Law of Arrest, Vehicle Code and Traffic Control, Crime Scene Reporting, Juvenile Law and Proceedings, Collection and Identification of Evidence, Disaster Training, as well as 28 hours of physical fitness training and 16 hours of "[t]arget practice at an authorized range to improve...ability with firearms." Each topic takes from one to 21 hours of class time.

One hundred and twenty-seven of the 240 class hours of the Basic POP course are taught by District personnel consisting of one instructor of record (whom the parties specifically stipulated out of the unit) and about 11 of the Parks and Recreation Instructors in question (hereafter POP instructors. "POP instructors" refers only to the instructors provided by the District). The instructor of record teaches topics totalling 27 hours, the POP instructors share 80 hours of instruction. The remaining class hours are instructed by personnel not employed by the District: Parks Department personnel instruct 125 hours, and Federal Bureau of Investigation personnel instruct eight hours.

The Basic and Advanced POP courses are administered by the Parks Department. Both courses are scheduled at the convenience of the Parks Department without regard to the District's semesters. At least one course has been begun mid-semester, and there was testimony that the Parks Department could schedule a course during August when summer school would have ended and no other District course would be active. The curriculum of Basic POP was established by the Parks Department to meet the standards of the POST requirements. The curriculum of the Advanced POP course, consisting of 80 hours in two weeks, was established by the Parks Department.

Examinations are conducted and graded solely by Parks Department personnel. Examinations are devised by the District's instructor of record in collaboration with Parks Department personnel. Suggestions and inquiries of POP instructors are directed to the Parks Department as well as to the District's instructor of record.

The District's instructor of record is responsible for hiring and supervising the POP instructors of the District as well as for registration of students and taking roll.

POP courses are open to the public, but were first listed in the District catalog in 1976, and at most two or three non-Parks Department students attend a course. Transferable institute credit is given for the courses.

The District receives Average Daily Attendance (ADA) funds from the state for attendance at POP courses as well as \$15 per student under a contract with the Parks Department. The District requires the Parks Department to provide a minimum of 15 students per course. Typically 25 are provided.

Between January 1974 and June 1977, 11 Basic POP and 10 Advanced POP courses were given. Each POP instructor is responsible for delivery of lectures and instruction on one or more of the topics which make up the courses. They instruct a median of eight hours per basic course and three hours per advanced course. Instruction may amount to as little as a one hour lecture on one day, or as much as 40 lecture hours on a number of days. This compares with the 48 hours taught by other full- and part-time faculty in a three unit course. In the 11 Basic POP courses given between 1974 and 1977 there have been 20 POP instructors. Three have taught in each of the 11 courses, two have taught in nine. The median number of courses taught is four. The median total number of hours taught is 20.5. In the 10 Advanced POP courses given between 1974 and 1977, 11 instructors have taught. Two have taught nine courses. The median number of courses taught is 3.5.

Unlike other full- and part-time instructors, POP instructors do not take roll, keep attendance records, devise, administer or

grade examinations, or evaluate students in any way. They do turn in a list of questions in their topic to the instructor of record when first hired, and they devise their own lesson plan with the approval of the District's instructor of record. They are required to be credentialed. Unlike full-time instructors, they are not required to provide conference time for students, and unlike other part-time instructors they are not compensated if they do volunteer conference time.

POP instructors are hired and fired on the independent judgment of the District's instructor of record. His decision is not subject to review by the District. Unlike other full- and part-time instructors, POP instructors do not receive a "pink slip" notification of hire from the District. Rather they are informed that they are hired by the instructor of record first by phone and then by letter.

All POP instructors are employed full-time as peace officers in local communities, several as the chief of police. In order to teach, POP instructors must receive a release from their primary employer although they are teaching on their own time.

POP instructors are evaluated by their students on Parks Department forms which are turned into POST, not the District. The District's instructor of record also evaluates the instructors by sitting in on their classes. The instructor of record makes no evaluation report, informs no one in the District of his conclusions, and uses his evaluations in his absolute discretion on rehiring. No other full- or part-time faculty members are evaluated in this manner.

POP instructors are paid on the same "step and scale" calculations of longevity and qualification as are other part-time instructors. Sick leave is also available to POP instructors. POP instructors have no District mailboxes, access to audio visual equipment, access to District secretarial aid, have no contact with other District faculty members unless they teach a course on the main campus, and cannot select texts.

Unlike full-time faculty, POP Instructors do not participate in the District's governance in any way. They do not participate in the Academic Senate or serve on committees.

DISCUSSION

No evidence was presented on established practices of employees or the effect of different units on the efficient operation of the school district. We determine the appropriateness of the unit solely by resolving the question of community of interest.¹²

The following criteria are considered by the Board in determining whether a community of interest exists between and among employees: supervision, work functions, wages, method of compensation, hours, employment benefits, qualifications, training and skills, contact with other employees, integration with work functions of other employees, and interchange with other employees.¹³ But community of interest is not determined by going down a check list of these factors. The point of the comparison is to reveal the interests of employees and ascertain whether they share substantial mutual interests in matters subject to meeting and negotiating.¹⁴ The interests of included employees must be mutual not distinct, and substantial not tenuous. Thus, employees may be excluded from

¹²Sec. 3545(a) of the EERA 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.

¹³Kalamazoo Paper Box Corp. (1962) 136 NLRB 134 [49 LRRM 1715];
See Sweetwater Union High School District (11/23/76) EERB Decision No. 4.

¹⁴See Continental Baking Company (1952) 99 NLRB 777, 782
[30 LRRM 1119J; Fifteenth Annual Report of NLRB, 39 (1950).

a particular unit either because their interests are separate and apart from those of the employees in that particular unit,¹⁵ or because their interest in negotiable matters subject to the control of the employer is so insubstantial that they do not share mutual interests with other unit employees.

In this case, POP instructors neither share a community of interest with members of the requested unit nor do they constitute a separate appropriate unit.

As POP courses are scheduled by the Parks Department when it wishes without regard to the semester system of the District, POP instructors serve in a form of on-call status not shared by other full- and part-time faculty. When on the job their responsibilities are, as those of guest lecturers, narrowly circumscribed to class preparation and lecturing. They never engage in student grading and evaluation, nor are they required to provide conference time with students. And, as they are not compensated for conference time which they volunteer, they are not financially encouraged to meet with students outside class hours. POP instructors share none of the classroom administrative responsibilities, such as maintaining attendance records, held by the remainder of the faculty of the District. Moreover, what interest POP instructors and other employees may share in the purely instructional duties of employment is altered and diluted by the fact that POP instructors teach relatively few hours; while full- and part-time instructors teach 48 hours in a three unit course in one semester, POP instructors teach a median of eight and three hours respectively in Basic and Advanced POP courses. Between 1974 and 1977 POP instructors taught a median total number of hours (20.5), less than one-half the hours of one three unit course (48).

Hiring, evaluation, and termination are conducted completely differently for POP instructors than for the remainder of the District's faculty. POP instructors are subject to the completely **independent** judgment of the District's instructor of record, while

¹⁵ See Kalamazoo, supra, at p. 137; NLRB v. Campbell Sons' Corp. (4th Cir. 1969) 407 F.2d 969 [70 LRRM 2886].

all other faculty are governed by formalized procedures featuring collegially reached decisions and some participation by the faculty member.

Though POP instructors are paid for class hours on the same salary schedules as other part-time employees, as already noted, they are not paid for their volunteered conference time with students as are other part-time instructors. Conversely, POP instructors are paid the same hourly wage as other part-time instructors despite the fact that they do not have out-of-class student evaluation and classroom administrative duties.

POP instructors are isolated from the rest of the faculty of the District. They do not encounter other faculty members unless they teach other courses on the main campus, they have no District mailbox, and do not participate in governance of the District at any level.

Moreover, the POP program is fundamentally the Parks Department's. The Parks Department needed the program and conceived the program. Now the Parks Department administers the program, and provides instructors for much of the program. Though POP instructors are employed by the District, it is the Parks Department which determines when they will teach a course, what topics they will teach, and where courses will be taught. It is the Parks Department which provides classrooms and administrative services, as well as the overwhelming number of students for the courses. Instructors and students are evaluated by the Parks Department. Any complaints or concerns of the instructors which involve the above matters must be and are taken up directly with the Parks Department, for Parks, and only Parks, controls those aspects of the work place. There was no testimony that the District attempts to influence Parks' decisions on these matters. In these circumstances the employment relationship between the POP instructors and the District is seriously attenuated.

The employment relationship is even further attenuated by the fact that every POP instructor is primarily employed full-time as a peace officer, some as chiefs of police in their communities,

and must receive a release from their primary employer in order to teach. We held in Los Rios that the mere fact that some part-time employees were employed elsewhere to some extent would not, by itself, negate the interest of the entire group of part-time employees in those matters subject to negotiations. But in the instant case we are asked to include a group of part-time employees, none of whom has a primary employment relationship with the District and whose interest in matters subject to negotiations with the District is circumscribed by the District's limited control over their working conditions. In particular, none of the conditions which might influence their primary employer's willingness to release them to teach are in the control of the District: the Parks Department controls the dates, hours and location of employment, No POP employee in question has a primary employment relationship with the District and each POP instructor's employment relationship with the District is itself of a seriously attenuated nature. Even assuming that there is a substantial interest in matters subject to meeting and negotiating, these matters cannot be resolved by the District which exercises such limited responsibility over them.

Also in Los Rios we ascertained part-time employees with a continuing interest in community college teaching by determining those employees who continually sought or obtained employment with the community college rather than by comparing the number of hours taught by members of the unit with the number of hours taught by the employees sought to be included. But, as in this case, when the employment relationship with the District is of a seriously attenuated nature, instructors who return and teach in POP course after POP course may thereby demonstrate a continuing commitment to the POP program but certainly do not demonstrate an interest in the affairs of the District.. Continuing commitment to the POP program simply does not entail commitment to teaching in Monterey Peninsula Community College. As a consequence, we do not find the

fact that the 20 POP instructors have taught a median number of four Basic and 3.5 Advanced courses apiece persuasive evidence of their commitment to teaching in the District.

In sum, POP instructors are not appropriately included in a unit with other District faculty as they perform distinctively narrow work functions, for relatively few hours, on an on-call basis, with unique supervision, and in isolation from the remaining faculty of the District. POP instructors do not, given the currently seriously attenuated nature of their employment relation with the District, constitute part of any appropriate unit for purposes of negotiating terms and conditions of employment with the District.

ORDER

The Public Employment Relations Board ORDERS that:

(1) Division chairpersons are not supervisory employees within the meaning of section 3540.1(m) of the Educational Employment Relations Act.

(2) Parks and recreation instructors are excluded from a unit appropriate for meeting and negotiating.

(3) The regional director shall open and count the ballots of division chairpersons and shall issue a revised tally of ballots.

By: Jerilou Cossack Twohey, Member Harry Gluck, Chairperson

Raymond J. Gonzales, Member, concurring:

I do not believe the majority should have addressed the issue of whether or not the division chairpersons are supervisory employees within the meaning of the EERA. While the Board may have the power to review sua sponte issues on which no timely exceptions are filed, I believe the Board should exercise that power rarely, if at all. Otherwise, the parties may be reluctant to file exceptions to one part of a hearing officer's decision for fear that the Board will

change another part which they may not want to appeal.¹ Also, the Board will be reviewing hearing officer's decisions without giving the parties an opportunity to provide input on the issues not excepted to which, in my opinion, deprives the Board of a potentially valuable source of legal analysis.

The majority cites National Labor Relations Board cases to support its position. However, these cases involve parties' agreements as to voter eligibility; they do not involve situations in which an NLRB administrative law judge has resolved an issue to which no party has excepted. Thus, these cases are more akin to Centinela Valley Union High School District,² in which the Board decided to stop accepting without question stipulations between the parties. The present case is distinguishable in that PERB, through its hearing officer, has made a decision on the status of division chairpersons. I would have assumed, since no timely exceptions on that issue were filed, that the hearing officer has followed the EERA and established Board policy in making that decision.

Hearing officer decisions to which no exceptions are filed become final.³ The only distinction I see between a case in which no exceptions are filed and a case in which an exception to an unrelated issue is filed is procedural — in the latter case, the Board has access to all issues while in the former, it does not. I do not find this distinction compelling and would not review issues on which no exceptions are filed.

¹ Cal. Admin. Code, tit. 8, sec. 32305 provides that a proposed decision shall become final unless a party files timely exceptions.

California appellate courts accept partial appeals of trial court decisions. The parts not appealed become final, and the appellate court has no jurisdiction to review those parts. 6 Witkin, Cal. Procedure, p. 4126. In this way, an appellant can seek relief without jeopardizing the benefit of a non-appealed portion. See Comment, 41 Cal. L. Rev. 277.

² (8/7/78) PERB Decision No. 62.

³ Cal. Admin. Code, tit. 8, sec. 32305.

The gratuitous nature of the majority's intervention is particularly clear in this case. The majority finds no substantive error in the hearing officer's result or analysis; it merely rewrites the facts and argument, while reaching the identical conclusion. When the issue has not been appealed, this seems to me to be a meaningless exercise of the Board's power. I would therefore allow the hearing officer's decision to stand. By this, I make no statement on the merits of the division chairperson issue; I simply do not think the Board should have reviewed this issue.

I concur with the majority's decision to exclude the parks and recreation instructors from the requested unit.

~~Raymond J. Gonzales~~, Member

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:)	
)	
MONTEREY PENINSULA COMMUNITY)	Case No. SF-R-481
COLLEGE DISTRICT,)	
)	
Employer,)	<u>CHALLENGED BALLOTS</u>
)	
and)	
)	
MONTEREY PENINSULA COLLEGE TEACHERS)	
ASSOCIATION, CTA/NEA,)	
)	
Employee Organization,)	
)	
and)	
)	
FACULTY ASSOCIATION OF MONTEREY)	
PENINSULA COLLEGE,)	
)	
Employee Organization.)	
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Appearances: Keith V. Breon, Attorney (Breon, Galgani & Godino) for Monterey Peninsula Community College District; Duane B. Beeson, Attorney (Brundage, Beeson, Tayer & Kovach) for Monterey Peninsula College Teachers Association, CTA/NEA; Elliot Roberts and Dr. Whitney Baines for Faculty Association of Monterey Peninsula College.

Before Barbara C. Bardach, Hearing Officer.

PROCEDURAL HISTORY

Pursuant to a consent election agreement entered into by the Monterey Peninsula Community College District (District), the Monterey Peninsula College Teachers Association/CTA/NEA (MPCTA), and the Faculty Association of Monterey Peninsula College (FAMPC) on May 17, 1977, a representation election was conducted by the San Francisco Regional Office of the Educational Employment Relations Board (EERB) on May 31 and June 1, 1977. The parties stipulated that the following was an appropriate unit of certificated employees:

The appropriate unit shall include all positions requiring certification qualifications. Specifically excluding: Superintendent/President, Administrative Deans of Student Personnel, Instruction, Community Education, Associate Deans of Instruction, and Student Personnel, Assistant Dean of Student Personnel, Director of Continuing Education, Director of Older Adults and Special Programs, Director of Data Processing, Coordinator of Vol Ar, Hourly Coordinator of Community Education, Fire Science Academy Coordinator, Coordinator of Parks and Recreation, all classified supervisory, management, and confidential employees. Also excluding Hidden Valley Music Seminar Instructors, Apprenticeship Program Instructors, Part-time Work Experience Coordinators, employees who teach only non-credit (900) level courses, consultants and guest lecturers, Instructors of Administration of Justice courses 602, 606, 651 other than Instructor of Record, and substitutes.

Prior to the election, and in the consent agreement, the parties stipulated that all voters classified as Division Chairpersons, Fire Science Instructors and Parks and Recreation Instructors at Asilomar would be challenged. It was further stipulated that a unit clarification hearing would be held to resolve the status of all persons in these job classifications should there be insufficient challenges to affect the election. At the conclusion of the election, the tally of ballots showed the following:

Approximate number of eligible voters	412
Void ballots	0
Votes cast for Monterey Peninsula College Teachers Association (MPCTA/CTA/NEA)	176
Votes cast for Faculty Association of Monterey Peninsula College (FAMPC)	167
Votes cast for no representation	<u>9</u>
Valid votes counted	352
Challenged ballots	<u>10</u>
Valid votes counted plus challenged Ballots	362

No party to the election received a majority of the total number of ballots counted and challenged. Therefore, the challenged ballots were sufficient to affect the results of the election and a hearing to determine the eligibility status of the voters was scheduled to commence July 6, 1977.

The 10 votes challenged by all parties on the basis of disputed positions mentioned earlier are:

Parks & Recreation	Foster, Charles C.
Division Chairpersons	Compton, B. Donald
	Cummins, Lawrence W.
	Jensen, Linley G.
	Johnson, Dennis W.
	Patrick, Owen G.
	Revoir, Bernard C.
	Stock, Morgan E.
	Stevenson Sr., James C.
	Trason, Winona B.

A hearing was held on July 6, 13 and 22, 1977 at which the parties agreed that the hearing would serve to address the resolution of (1) whether any of the above challenged ballots should be counted; (2) whether the job classification of Division Chairperson is supervisory and therefore excluded from the unit; and (3) whether the job classification of Parks and Recreation Instructor at Asilomar should be included in the unit. At the commencement of the second day of hearing on July 13, 1977, the parties further stipulated that the decision resulting from this hearing on the classification of Parks and Recreation Instructor at Asilomar would also apply to the classification of Fire Science Instructor. This hearing officer accepts the agreement of the parties to avoid a separate unit clarification hearing on this position in this manner, despite the fact none of the Fire Science Instructors¹ cast a challenged ballot.

ISSUES

1. Are division chairpersons supervisory employees?
2. Are parks and recreation instructors appropriately included in the unit?
3. Are the persons in the above classifications who cast challenged ballots eligible voters?

¹This classification of part-time instructors has similar terms and conditions of employment to the part-time instructors in Parks and Recreation.

DISCUSSION

The Monterey Peninsula Community College District is comprised of one official campus in Monterey and a Community Education Program offered at numerous locations in and around Monterey which includes evening, older adult, summer, and community services programs, a special program at Ft. Ord predominately for military personnel and their dependents, and a special program at Asilomar predominately for State Parks and Recreation Department personnel required to have peace officer status. The District employs approximately 140 full-time certificated employees and from 270 to 320 part-time hourly temporary certificated employees. Approximately 125 certificated employees including regular full-time academic year instructors and part-time hourly temporary instructors teach in the summer program. The District also employs substitute employees.

DIVISION CHAIRPERSONS

FINDINGS OF FACT

There are nine formal divisions and one informal division. The informal division is administered by the Director of Continuing Education, who was excluded from the unit by agreement of the parties. The nine divisions range in size from approximately 2 to 27 full-time faculty. It is the position of the MPCTA that the nine division chairpersons, each of whom cast a challenged ballot, are supervisory employees and should therefore be excluded from the negotiating unit and thus have their challenged ballots sustained. The District and the FAMPC maintain division chairpersons are not supervisory and, as eligible voters, should have their challenged ballots counted. The FAMPC also argued for inclusion on the basis of community of interest.

Division chairpersons receive from 20 to 50% release time to perform administrative duties; the remainder is spent as a regular instructor. They are paid on the regular faculty salary schedule and receive no extra stipend. They are assigned to work an additional five days a year more than the regular faculty to prepare for the new school year, as are foreign student advisors and counselors. Like other faculty, they can teach an overload or summer school for extra pay.

Chairpersons are elected by the faculty and confirmed by the superintendent/president. In almost every instance, only one name has been forwarded for confirmation by the superintendent/president. Where more than one name is submitted, the superintendent/president makes the selection. Only one such instance was recalled, and in that case the two names submitted were described as being equally acceptable to the faculty. Once, some years ago, a nominee was rejected by the superintendent/president. No testimony was presented showing a selection was made exclusively by the superintendent/president.

Division chairpersons serve a three year term. They can be re-elected to an unspecified number of terms or extended through lack of another election. They are evaluated by the faculty. No administration representative participates in that evaluation, but the administration is apprised of the results. They can and have been recalled by the faculty through a no-confidence vote. It is unclear if the administration could also relieve them of their duties since this has never happened. District policy does not require division chairpersons to hold a supervisory or administrative credential and none of those who testified holds one. Chairpersons have a regular faculty office.

Chairpersons can and do belong to the Faculty Senate - in fact one currently holds office and one has served as president. They also belong to the Division Chairpersons' Caucus which is composed of the nine division chairpersons, the head librarian, the head counselor, the dean of instruction who chairs the meeting, and occasionally various other administrators. The Caucus meets every other week unless cancelled due to lack of agenda. These are primarily information sharing meetings and not involved in policy formulation activities. The Caucus has not taken any formal vote on any administrative matter.

Division chairpersons hold and chair division meetings, usually once or twice a month. Information received by the chairperson at Caucus meetings as well as divisional items such as the budget and curriculum matters are discussed.

Chairpersons serve on faculty selection committees which include faculty and administration representatives. Chairpersons coordinate and facilitate the process: they chair the committee, suggest faculty or get volunteers to serve on the committee, sometimes draft a preliminary job description, receive applications, arrange the interview schedule and call the meetings. The committee reviews applications and agrees on a screening process, the rating scale to be used and the interview questions to be asked. The top three candidates, selected on the basis of the consensus of the committees' overall ratings, are then interviewed by the superintendent/president. The final selection is made by agreement or vote of the committee and the superintendent/president. Division chairpersons carry no more weight in that process than any other committee member; in fact one division chairperson testified that a candidate he strongly favored was not the one ultimately selected by a screening committee he chaired.

The screening process for part-time faculty is done at the department level. Some are one person departments. The division chairperson relies on departmental expertise and merely rubber-stamps their recommendations to the administration. Frequently a division chairperson may not even see the candidate unless the vacancy exists in his/her own area of expertise. One division chairperson testified he alone makes hiring recommendations in his area of expertise, but indicated this would occur even if he were not the division chairperson.

Division chairpersons serve on evaluation committees for contract (non-tenured) instructors. The committee includes at least one peer of the evaluatee's choosing and an administrative representative. Division chairpersons coordinate and facilitate the process by calling and chairing meetings, making sure everything is done and deadlines are met. The committee agrees on an evaluation procedure and makes recommendations to the evaluatee through committee consensus.

Regular full-time (tenured) instructors are evaluated every other year. A machine graded student evaluation is all that is required. A computer print-out of the results goes to the dean of instruction, the division chairperson and evaluatee. The individual then meets to discuss the evaluation with the dean of instruction in the presence of the division chairperson who functions as a faculty advocate in this process. Should suggestions for improvement be made, the division chairperson has no responsibility to follow-up on their application. Division chairpersons are also evaluated as a faculty member.

Part-time (hourly temporary) instructors are evaluated by a full-time faculty member who teaches the same course or by an administrator. All faculty including division chairpersons are paid to conduct evening evaluations. The written evaluations go directly to the community education offices or to the dean of instruction's office.

Faculty members usually notify the division chairperson of absences. They appoint their own substitutes. The division chairperson or, more frequently, the division secretary notifies the administration of reported absences. Chairpersons do not handle time cards or pay vouchers. These and unexcused absences are handled by the dean of instruction's office. No division chairperson who testified has ever recommended a loss of pay for an unexcused absence, nor knew if they even had such authority. All disciplinary problems are handled by the administration - none of those testifying has ever issued a verbal or written warning or reprimand in a supervisory capacity.

Chairpersons do not have the authority to transfer, suspend or terminate an employee. Only the administration can take such actions. One chairperson testified he has on several occasions effectively recommended termination, but qualified this by saying he was merely supporting the department recommendation in each instance and not independently recommending such action.

The specific role of chairpersons in the grievance procedure, other than to be informed at level one, is unclear. None testifying had ever been involved in a formal grievance, though one was involved in an attempt to resolve an apparent grievance. All contact in that instance was verbal and no written records were maintained by that chairperson. All indicated they felt it was their responsibility to attempt to resolve problems within their divisions.

Division chairpersons are sometimes asked to approve leave requests, but many faculty members go directly to the administration. One division chairperson testified she routinely signs such requests and that one she signed was once denied by the administration. Sabbatical leaves can and have also been taken by division chairpersons.

The schedule is developed at the department level as are teaching load and room/lab assignments. Division chairpersons are responsible for coordinating, checking and forwarding these recommendations to the administration which then carefully reviews and makes numerous changes in the recommendations. Instructors select their own texts and determine class size. If there are problems, the division chairperson functions as a go-between with the administration and faculty member to iron them out. Chairpersons review and sign new course requests. Course proposals are reviewed by the Curriculum Advisory Committee which is a faculty committee, then by the Administrative Cabinet which consists of the superintendent/president and the deans, and then by the Board if recommended by the Cabinet. Irrespective of the division's or the Curriculum Committee's recommendations, all requests still proceed to the Cabinet level for their review and possible recommendation to the superintendent/president. One division chairperson testified he alone effectively recommended a course expansion/staff addition in his area of expertise. He indicated, however, that anyone with interests and expertise in one particular subject area would push for changes in the curriculum or additions in staff. In fact, faculty members have taken new course proposals or schedule changes directly to the administration without; even consulting him.

The budget is also developed at the department level. Division chairpersons coordinate, check and forward these recommendations to the administration which has the final say in all budget matters. The departments are essentially responsible for their own supply budget, but purchase requisitions and conference attendance request forms must be signed by the division chairpersons. None who testified have ever refused to sign such requests, viewing it as merely pro forma. All requests are subsequently

reviewed and occasionally denied by the chief accountant. Chairpersons have the authority to transfer up to \$100 from one fund to another.

There are a variety of classified positions within each division. The division secretary who receives assignments from all division members is supervised and evaluated by the division chairperson; all other classified personnel such as lab aides are supervised and evaluated by department chairpersons. No testimony was presented showing division chairpersons direct and assign work to other than the division secretary. In fact, from all testimony received, it appears such authority is retained by the administration, while division chairpersons possess only minor administrative authority to request faculty members to perform already specified duties and responsibilities.

CONCLUSIONS OF LAW

This is a question of supervisory status and not community of interest. Government Code Section 3540.1(m) defines a supervisory employee as follows:

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.

Sweetwater Union High School District² held that this section is written in the disjunctive and that an employee need only possess one of the enumerated functions or duties, or have the power to effectively recommend such action, to be a supervisor within the meaning of the Act.

²EERB Decision No. 4, November 23, 1976.

The Board has applied this section of the Act to certificated college employees in only one previous case, Los Rios Community College District.³ In that case, the Board ruled that this supervisory definition as applied to certificated community college employees must be viewed in light of long-standing traditions of collegiality and shared authority within institutions of higher education.⁴ Based on the following, the Board found that the division chairpersons' duties were clearly supervisory requiring an allegiance with the administration not required of other faculty: selection by the administration; payment of a substantial stipend; assignment of between 60 and 90% of their time to perform administrative duties; ineligibility to participate in the faculty senate; responsibility for resolving disciplinary problems and maintenance of grievance and attendance records; ability to recommend a loss of pay for unexcused absences, termination or transfer; appointment of substitutes; assignment of room/lab facilities; determination of class size; and assignment of classes through consultation with the faculty. In the instant case, a similar finding cannot be made.

There is no current job description for division chairpersons. Testimony of current and past division chairpersons and the administration revealed many distinctions from the role of division chairpersons in Lo's Rios. These distinctions are compelling: election by the faculty to serve as spokesperson to the administration; direct responsibility to the faculty who evaluates and is able to recall them; lack of any additional stipend; release time of between 20 and 50% to perform administrative duties with the remainder of their

³ EERB Decision No. 18, June 9, 1977,

⁴ Ibid, at p. 15,

time, between 50 and 80%, spent teaching; eligibility to participate in the faculty senate; no exercise of substantial control over critical aspects of faculty teaching responsibilities; no authority to determine class size and location; and no responsibility for processing grievances or maintenance of attendance records. In a somewhat similar case dealing with high school department heads, administrative activities which were routine in nature and required little, if any, exercise of independent judgment, were not deemed supervisory by the Board.⁵ In the instant case, the record did not reveal that the execution of any of the following division chairpersons' activities involved the use of independent judgment: holding and chairing meetings, coordinating the hiring, evaluation, scheduling and budgetary processes; signing new course proposals, leave requests and purchase requisitions; and acting as a communication liaison between the faculty and the administration. Similarly, serving as a conduit of administration information and participating in the Chairpersons' Caucus which is chaired by an administrator cannot be construed as making division chairpersons an arm of

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the administration. In fact, each of the division chairpersons and administrators who testified agreed that division chairpersons function as faculty advocates. In the words of one division chairperson:

"I have no authority. They (the faculty) can tell me to go to hell, and some do..."

Based on all of the foregoing, it is clear that division chairpersons handle their administrative duties in a routine manner without the use of independent judgment, function as faculty advocates and not an arm of the administration, and do not exercise or possess any supervisory authority found in Section 3540.1(m).

⁵See New Haven Unified School District, EERB Decision No. 14, March 22, 1977, p. 7.

⁶Ibid, at p. 7.

PARKS AND RECREATION

FINDINGS OF FACT

The challenged ballot is that of Charles Foster, a part-time hourly temporary instructor in Parks and Recreation. The MPCTA urges the inclusion in the negotiating unit of Mr. Foster and other Parks and Recreation instructors like him based on a community of interest. It is the position of the District that Parks and Recreation instructors should be excluded from the unit based on a lack of community of interest, their similarity to other stipulated excluded categories such as substitutes and summer school employees, and because of the separate and unique nature of the Parks and Recreation program. The FAMPC originally took no position, but, upon the enlargement of this issue the second day of hearing to include Fire Science instructors in the outcome⁷, subsequently joined the position espoused by the District.

The Parks and Recreation program at Asilomar was established in 1972 under the auspices of the Monterey Peninsula Community College District at the request of the State Parks and Recreation Department. The program provides peace officer training which is mandated by the State for all Parks and Recreation personnel required to have peace officer status, such as park rangers. It is administered jointly by the District and the Parks and Recreation Department: a coordinator/instructor of record employed by the District and a training director and three coordinators employed by the Parks and Recreation Department. A contract calls for payment of approximately \$5.00 per student by the Parks and Recreation Department to the District for academic and accreditation responsibilities.

There are two major programs offered on a fiscal year rather than semester basis: a Basic Program for ranger trainees and an Advanced Program of refresher courses for those with 3-4 years of job experience. They are

⁷ See above p. 3.

numbered Administration of Justice 607 and 608 respectively. Ordinarily these would be included in the Social Sciences Division where other Administration of Justice courses are found. However, the faculty in that division showed no interest in the program and thus it is included in the one informal division under the direction of the Director of Continuing Education. This informal division is a collection of largely technical-vocational courses and programs offered only in the evening division and not in other divisions.

There are numerous 600 level courses in almost every division of the College District. These are credit institute courses which are developed by divisions within the District. The Parks and Recreation program, however, was not developed in this manner.

The Basic Program consists of 240 clock hours of instruction over two three week periods of 40 hours per week. The curriculum is established by POST, the California Commission on Peace Officer Standards and Training. The Commission was established in 1957 to standardize the training and requirements for law enforcement agencies throughout the State of California. The Advanced Program consists of 80 clock hours of instruction over a two week period. It is not certified by POST and its curriculum is determined by Parks and Recreation personnel. A State Parks and Recreation Department training syllabus containing rules and regulations, course outlines and objectives, an agenda and expectations is provided to each student. The College District has no involvement with its preparation.

Each program is offered on a year-to-year basis depending upon the needs of the Parks and Recreation Department. The courses appear in the published schedule of District courses and is open to the public, though few attend. Class size ranges between 35 and 40. There is no question of cancellation since the Parks and Recreation Department controls the assignment of students.

The caliber of the students is higher than usual since most already possess a B.A. or B.S. degree and intend to fulfill employment requirements. Eight units of credit are offered by the College District for the Basic Program and three units for the Advanced Program. Testimony revealed that the program has continued on a year-to-year basis since 1972. Continuation of the program is planned for the fall of 1977 and expansion of the program is currently contemplated.

Three separately funded groups provide instruction in the Basic Program: Parks and Recreation personnel are responsible for 113 hours; the Federal Bureau of Investigation provides 20 hours; and the Monterey Peninsula Community College District handles the remaining 107 hours of instruction. The Monterey Peninsula Community College District coordinator/instructor of record who is excluded from the unit as a supervisor, is responsible for 27 hours of lecture himself and hires approximately 11 local law enforcement experts to assist him with the remaining portion provided by the District. These part-time hourly temporary instructors are all fully employed elsewhere and must be released by their employer to teach on their own time. They are required to hold a community college credential and two witnesses indicated they hold a special or designated subject credential.

A similar program was begun earlier at Fort Ord in 1969 to provide POST training for military personnel interested in law enforcement careers. The curriculum was essentially the same but with a different emphasis. Many of the instructors with the current Parks and Recreation program also taught at Fort Ord under the same instructor of record as at Asilomar. The POST program was part of a larger program of various community college offerings for military personnel and their dependents. It was deleted in 1974 due to the arrival of the Seventh Army and a shift in the basic training to permanent party situation; other courses from several Monterey Peninsula Community College District divisions continue to be offered at Fort Ord.

CONCLUSIONS OF LAW

Government Code 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.

In Los Angeles Unified School District,⁸ the Board adopted several standards established by the National Labor Relations Board to assist in interpreting community of interest criteria. They include qualifications, training and skills, job functions, method of wages or pay schedule, hours of work, fringe benefits, supervision, frequency of contact with other employees, integration with work functions of other employees, and interchange with other employees.⁹

In Los Rios Community College District,¹⁰ the Board considered the question of whether full- and part-time instructors shared a sufficient community of interest to be included in the same negotiating unit. Part-time instructors in Los Rios performed essentially the same duties and had the same skills, working conditions and rights as full-time instructors. The curriculum was also substantially in accord with that taught by full-time instructors. In addition, their level of compensation was directly related to that of full-time instructors. Detailed analysis of the roles and responsibilities of the two groups caused the Board to

⁸EERB Decision No. 5, November 24, 1976.

⁹See Kalamazoo Paper Box Corporation, 136 NLRB 134, 49 LRRM 1715 (1962).

¹⁰EERB Decision No. 18, June 9, 1977.

conclude that full- and part-time instructors were appropriately members of the same unit. A key factor in that decision was continuity of employment which the Board felt demonstrated commitment to and interest in the community college's objectives.

In the instant case, the parties established a unit consisting of all positions (part- and full-time) requiring certification qualifications with various enumerated exclusions and three disputed categories.¹¹ At the hearing, much testimony centered around the District's attempt to prove exclusion of part-time Parks and Recreation instructors based on the "unique" nature of the Parks and Recreation program in that it provides specialized, State mandated training to students who, for the most part already possess a Bachelor's degree and who must attend the training to fulfill an employment requirement. Parallels between the stipulated exclusions of substitute, summer school and guest lecturer (casual) employees were also argued by the District.

Numerous decisions of the Board have held that substitute and summer school employees along with adult education, CETA and home teachers are appropriately excluded from a regular certificated unit based on the separate and unique nature of their program, a lack of re-employment rights, employment on an as-needed basis, or the tenuous and short-term nature of such employment.¹² The criteria the Board found to be determinative and which led to the characterization of "separate nature" included the following: separate administration, funding, hiring process, and purpose from the regular program; no expectation of continued employment; different credential requirements, hours of work, benefits and salary schedules; unique job qualifications,

¹¹ See above p. 2.

¹² ~~Belmont Elementary School District~~, EERB Decision No. 7, December 30, 1976; ~~Petaluma City Elementary and High School District~~, EERB Decision No. 9, March 1, 1977; ~~Lompoc Unified School District~~, EERB Decision No. 13, March 17, 1977; and ~~New Haven Unified School District~~, EERB Decision No. 14, March 22, 1977.

subjects, and students taught; few if any transfer opportunities; and little contact with the regular program staff.

A close look at the work functions of the included part-time instructors and those in question must be made to make an appropriate unit determination. They need not be compared to those exclusions stipulated to by the parties since such agreements may not necessarily reflect the precedents of the Board and thus carry no weight in determining a community of interest. A comparison of the included and disputed part-time instructors based on the Board adopted NLRB standards follows:

Qualifications

Both groups are expected to have expertise in their area of instruction. Credentials are required of these as well as of summer school and substitute employees.

Training Skills

Part-time instructors are selected primarily on the basis of expertise. Outside employment often provides them with the expertise required to teach in a specialized program in a community college.¹³ All of the Parks and

¹³Section 87275 of the Education Code (as reorganized, April 30, 1977) and Title V of the California Administrative Code set out the various academic requirements for attaining community college credentials. (1) Teachers who teach in excess of 12 units must hold a Master's degree. (2) Two distinct credentials are available for those seeking to teach less than 12 units of community college classes. The prerequisites for obtaining a temporary ("Special Limited Services") credential are (a) graduation from high school or possession of a General Education Development Diploma, and 6 years of appropriate occupational experience, or (b) possession of an A.A. degree, or completion of 60 semester units of course work, and four years of appropriate occupational experience. For a non-temporary ("Limited Service") credential, the requirements are (a) graduation from high school, and six years of appropriate occupational experience, plus 60 clock hours or four semester units of teacher training; (b) possession of an A.A. degree, or completion of 60 semester units of course work, and four years of appropriate educational experience, plus 60 clock hours or four semester units of teacher training; (c) possession of a B.A. degree, plus two years appropriate occupational experience; or (d) four years of higher education, plus certification by the district in each subject in which the applicant has adequate training and experience to teach. Cal. Admin. Code, Title 5, Sections 52572-73, 52560-64. (3) For non-credit instructors, the prerequisites for obtaining a credential ("Certificate of Qualification") are four years of higher education (120 semester units), or four years of occupational experience, plus certification by the district that the applicant has adequate training and experience to teach the classes for which the applicant to be employed. Cal. Admin. Code, Title 5, Section 52600.

Recreation part-time instructors are employed elsewhere. In Los Rios the Board held: "We do not believe that the mere fact that some part-time instructors are employed elsewhere, standing alone, negates their interest in those matters within the scope of representation at this District for the time they are employed by the District."

Job Functions

Essentially, the primary job function of both groups is similar: to provide instruction in an area of expertise. The difference, if indeed it is one, lies in the purpose of the program in which instruction is given and the student population receiving that instruction.

Numerous 600 level credit institute courses exist in almost every division of the College District. The two courses in question, Administration of Justice 607 and 608, are found in the informal division of mainly technical-vocational courses and programs administered by the Director of Continuing Education under the supervision of the Dean of Community Education.

The Dean of Community Education estimated that between 10 and 20%, perhaps more, of the total community education program consists of short-term graded courses. He indicated that there are any number of courses whose format is such that they are designed to meet the needs of the specific audiences or target groups that the college works with. The 600 level programs, which are not required to go through the same curriculum development process as other district programs, are predominantly taken from existing curriculum and expanded on, or gone into in some depth, to meet those specialized community needs. Some of the subject matter taught in Administration of Justice 607 and 608 is found in the on-campus Administration of Justice courses numbered 602, 606 and 657 which are included in the Social Sciences Division. Each is a three unit course with a minimum of 48 hours of instruction. All three courses are under an instructor of record who has used approximately

fourteen instructors to assist him in a manner similar to that of those part-time instructors in dispute. The instructor of record is responsible for class rolls, exams and grades. He was included in the unit by consent of the parties and the instructors excluded as guest lecturers.

Method of Wages

There are two pay schedules for part-time hourly temporary employees. All part-time instructors including substitutes and summer school instructors are paid on one or the other depending upon their qualifications.

Hours of Work

Generally, part-time instructors teach one three unit course per semester which meets for three hours a week per semester totalling a minimum of 48 hours of instruction. Those in the Parks and Recreation category teach anywhere from 1 to 21 hours per eight unit Basic Program course and between 3 and 5 hours each per three unit Advanced Program course. In the 1976-77 academic year two Basic Programs were offered between February 1977 and May 1977 and three Advanced Programs between October 1976 and May 1977. Thus the total number of hours per instructor ranged between 8 and 54 hours for all five courses. Admittedly, the average total number of hours taught by the group in question is less than those of most part-time instructors.

Most District courses are offered on a semester basis, but some overlap. The Parks and Recreation courses are taught on a fiscal year basis and offered only when requested by the Parks and Recreation Department.

Notices of employment also differ. All part-time instructors in the unit receive a "pink slip" from the District which serves as a written confirmation of employment. A letter from the coordinator/instructor of record is received by the part-time instructors in question.

Fringe Benefits

All part-time instructors are eligible for pro-rata sick leave, including those in dispute.

Supervision

Part-time instructors are included in one of the nine formal divisions or the informal division headed by the Director of Continuing Education. Evaluations are required of all part-time instructors by a full-time faculty division member. However, those in the Parks and Recreation group are not evaluated on behalf of the District, but for the State Parks and Recreation Department and POST. The coordinator/instructor of record testified that, although he makes no evaluation for the District, retention of his instructors is somewhat based on the other evaluations he makes.

The hiring process for these two groups appears to differ: the part-time instructors in question are exclusively hired by the coordinator/instructor of record; other part-time instructors are usually hired after divisional interviews and an interview with an administrator, although at Fort Ord, the coordinator sometimes exclusively hires instructors himself.

Frequency of Contact with Other Employees

Because of their off-campus location, only those part-time Parks and Recreation instructors who also teach elsewhere for the District have any contact with other unit employees.

Integration with Work Functions of Other Employees

As shown, both groups have essentially the same job function. Numerous duties and responsibilities are inherent to the performance of that function. These responsibilities must be analyzed as they compare with those of part-time instructors appropriately included in the unit.

- a) Registration and Attendance - All but part-time instructors in the Parks and Recreation category have this responsibility.

- b) Lesson Plans - Both groups of part-time instructors are responsible for lesson plans. The curriculum for the group in question, however, is not established by the District.
- c) Exams - Part-time instructors in the unit are responsible for exam preparation and grading. The part-time instructors in question are only responsible for submitting a set of questions on their particular specialty to the coordinator/instructor of record. There is no requirement that these questions be used in an exam.
- d) Grades - Unlike other part-time instructors, the group in question does not issue grades.
- e) Class Size - District policy requires a minimum enrollment of 15 for a class to be held which applies to the group in question as well. However, classes in the Parks and Recreation Department are controlled through assignment to the class by the department and none are cancelled.
- f) Tenure - In Los Rios the Board held that, since tenure rights for part-time evening faculty are in a state of flux, no controlling weight would be accorded tenured status in reaching a decision about community of interest.¹⁴ Thus no determination will be made on this item.
- g) Office Hours - The instructors in question are not required to hold nor eligible to be paid for office hours. Other part-time instructors are also not required to hold office hours, but can be paid to do so.
- h) Office Space - Neither category of part-time instructors has assigned office space.
- i) Committees/Meetings - Neither group is eligible to participate on faculty committees nor required to attend division/department meetings.

¹⁴Supra, at page 10

- j) Student Conference Time - Part-time instructors are not required to provide this.
- k) Mailbox - All but the Parks and Recreation part-time instructors have mailboxes.
- l) Administration Bulletins and Memorandums - All but the part-time group in question receive these.
- m) Support Services - These are available to the instructors in question through the coordinator/instructor of record. All other part-time instructors have direct access to clerical, copying and printing services.
- n) Audio-Visual Services - The District provides these services to all but the group in question which is provided such services by the Parks and Recreation Department.

Interchange with other employees

This occurred only to the extent some Parks and Recreation instructors are also part-time instructors in other District courses.

In its decisions, the Board has shown that it places primary emphasis on the job functions of the employees in question and on an expectation of continued employment.¹⁵ The above detailed comparison based on NLRB standards yields two main distinctions between the included part-time instructors and those in question: the required record keeping and class administration responsibilities; and the number of hours of instruction. Neither of these factors alone substantiates the argument for exclusion. In addition to these factors, the District and the FAMPC argue that the part-time instructors in question have a short-term tenuous

¹⁵ See ¹⁵Pittsburgh Unified School District, EERB Decision No. 3, October 14, 1976; Sweetwater Unified School District, EERB Decision No. 4, November 23, 1976; Los Angeles; and Belmont Elementary School District, EERB Decision No. 7, December 30, 1976.

employment relationship similar to substitutes and summer school employees. Further similarities to other programs such as CETA, adult school, and summer school were also argued on the basis of the separate nature of the program. Thus, a review of Board decisions which have excluded those groups of employees on the basis of community of interest should provide a resolution to the question at hand.

In Belmont, Petaluma, Oakland Unified School District,¹⁶ and Los Rios the Board considered the unit placement of both long and short-term substitutes. On the basis of differences in the employment conditions and no expectancy of future employment, the Board concluded a community of interest did not exist between regular and substitute employees. In Belmont, Petaluma and New Haven the Board held that summer school teachers should be excluded from the regular unit because of the short-term and tenuous nature of their employment and because of the separate nature of the summer school program. In the instant case, all part-time instructors have essentially similar working conditions, though somewhat different job functions. They do, however, have a reasonable expectation of continued employment. Although no re-employment rights are guaranteed these instructors, past practice reveals steady and continued employment of a small nucleus of instructors, many of whom are from the Ford Ord program which began in 1969.

In New Haven, Petaluma and Lompoc the Board considered the CETA, adult school and home teacher programs. The Board found in New Haven that CETA instructors shared no community of interest with the regular certificated staff. They teach a very specialized program for unemployed students with separate funding and supervision; have different pay and benefits; and have no guarantee, practice or policy regarding re-employment. Adult school teachers in Petaluma

¹⁶EERB Decision No. 15, March 28, 1977.

and New Haven were found by the Board to be similar to substitute employees; to have different credential requirements, pay structure and fringe benefits; to be supervised separately from the regular staff; and to have different tenure rights. All these factors again led the Board to conclude that these instructors were part of an entirely separate program from the regular day school program. Home teachers in Petaluma and New Haven were also found by the Board to be similar to substitutes in that they are called on an as-needed basis and have no re-employment rights. Their working conditions and terms of employment were found to have little in common with regular instructors and thus were excluded from the regular unit.

Each of these cases dealt with the "separate nature" criterion. The instructors in the instant case, however, differ from these employees in several significant areas: their employment is not short-term or tenuous; their credential requirements, fringe benefits, and method of pay are similar to other part-time instructors; their working conditions and terms of employment, though not as formalized as those of other part-time instructors, are related; and their continued expectation of employment is not dissimilar to that of other part-time instructors in the unit. They do teach specialized courses, but so do many other part-time instructors.¹⁷ Their line of supervision is separate though not entirely different from that of other part-time instructors, as evidenced by the Fort Ord program where the coordinator functions in a similar manner to that of the supervisor at the Asilomar program.

In light of their similarities to other part-time instructors, the reasonable expectation of continued employment, and the continuing nature of the Parks and

¹⁷Testimony and exhibits revealed that a large variety of special interest courses are offered such as "Photography and Film Production," "In Search of Self," "Real Estate License Preparation" and "What Every Child Needs for Good Mental Health."

Recreation program, these part-time instructors do share a community of interest with other part-time instructors in the unit. As in Los Rios, however, because of their minimal hours, only those part-time instructors who continually, semester after semester, teach in a community college, thereby demonstrating their commitment to and interest in its objectives, are appropriately included in the unit. Therefore, those part-time instructors who taught the equivalent of three or more semesters during the last six semesters inclusive are included in the negotiating unit. No evidence was offered with respect to the "efficient operation" or "established practices" criteria and thus no determination will be made on these issues.

PROPOSED ORDER

It is the Proposed Decision that:

1. Division Chairpersons are not supervisory within the meaning of Government Code Section 3540.1(m) of the EERA.

2. Part-time hourly temporary Parks and Recreation Instructors who have taught at least the equivalent of three semesters of the last six semesters inclusive¹⁸ are appropriately included in the unit.¹⁹

3. The following employees casting challenged ballots are employees within the unit eligible to vote and their ballots shall be counted:

Donald B. Compton, Lawrence W. Cummins, Linley G. Jensen, Dennis W. Johnson, Owin G. Patrick, Bernard C. Revoir, Morgan E. Stock, James C. Stevenson Sr., Winona B. Trason.

¹⁸As used in this Order, the word "inclusive" means that an instructor who is presently teaching for a third semester, under this formula, would also be considered eligible.

¹⁹By stipulation of the parties, Fire Science Instructors who meet this criteria are also included in the unit.

4. Challenged voter Charles C. Foster is an eligible voter if he taught at least the equivalent of three semesters of the last six inclusive.

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 Rules and Regulations. If no party files timely exceptions, this proposed decision will become a final order of the Board on November 29, 1977 and a notice of decision will issue from the Board. At that time the regional director is further instructed to open each of the challenged ballots determined to be valid herein, to file a revised tally of ballots consistent with this decision, and to certify an exclusive representative of the employees in the office-technical unit or to conduct a runoff election as appropriate..

Dated: November 17, 1977

Barbara C. Bardach
Hearing Officer