STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PASO ROBLES UNION SCHOOL DISTRICT,

Employer,

and

PASO ROBLES JOINT UNION HIGH SCHOOL DISTRICT

Employer,

and

PASO ROBLES TEACHERS ASSOCIATION, CTA/NEA

Employee Organization,

and

PASO ROBLES FEDERATION OF TEACHERS
LOCAL 3553, AFL-CIO,

Employee Organization.

Case Nos. LA-R-130
LA-R-703

PERB Decision No. 85

January 9, 1979

SAN RAFAEL CITY HIGH SCHOOL DISTRICT,

Employer,

and

SAN RAFAEL ELEMENTARY SCHOOL DISTRICT,

Employer,

and

SAN RAFAEL CITY SCHOOLS,

Employer,

and

SAN RAFAEL TEACHERS ASSOCIATION, CTA/NEA,

Employee Organization,

and

SAN RAFAEL FEDERATION OF TEACHERS,
LOCAL 1077, AFL-CIO,

Employee Organization.

Case No. SF-R-355

Appearances; Daniel C. Cassidy, Attorney (Paterson & Taggart) for Paso Robles Union School District and Paso Robles Joint Union High School District; Charles R. Gustafson, Attorney for Paso Robles Teachers Association, CTA/NEA; Anne Fragasso, Attorney for Paso Robles Federation of Teachers, Local 3553, AFL-CIO.

Richard Godino, Attorney (Breon, Galgani & Godino) for San Rafael City High School District, San Rafael Elementary School District, and San Rafael City Schools; Francis R. Giambroni, Attorney (White, Giambroni & Walters) for San Rafael Teachers Association, CTA/NEA; Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for San Rafael Federation of Teachers, Local 1077, AFL-CIO.

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

DECISION

These cases are before the Public Employment Relations Board (formerly Educational Employment Relations Board, hereafter Board) on exceptions to hearing officers' proposed decisions. Because identical issues are presented for resolution, we have consolidated the cases on appeal.[1] In both instances, we are asked to determine whether the respective school districts are one or two employers under the Educational Employment Relations Act (hereafter EERA).[2] We conclude in both cases that the two districts are separate employers within the meaning of the EERA. For the reasons set

---

[1]Cal. Admin. Code, tit. 8, sec. 32320(a)(2) provides:

32320. Decision of the Board Itself.

(a) The Board itself may:

****

(2) Affirm, modify or reverse the proposed decision, order the record reopened for the taking of further evidence, or take such other action as it considers proper.

[2]Gov. Code sec. 3540 et seq. All references herein unless otherwise noted are to the Government Code.

forth herein, the hearing officer's decision in San Rafael is reversed and the hearing officer's decision in Paso Robles is sustained.

FACTS

Paso Robles

On April 1, 1976, the Paso Robles Teachers Association (hereafter Association) filed a petition for exclusive representation of a single unit of certificated employees in the elementary and high school districts. On May 4, 1976, the Paso Robles Federation of Teachers (hereafter Federation) requested the representation of two units: one unit comprised of high school personnel and one unit comprised of elementary personnel. On May 18, 1976, the District requested a unit determination hearing. At the hearing on March 10, 1977, the parties entered into a stipulation on the composition of the unit. They agreed that whatever the determination made as to whether the districts were a single employer or two employers, the unit or units should consist of all certificated employees excluding the superintendents, principals, vice principals, administrative assistants/business managers, director of special projects (child development unit director) and all substitutes. The unit or units would therefore contain 45 high school employees and 80 elementary employees.

On December 1, 1977, a PERB hearing officer concluded that the High School District and the Elementary School District are two employers for purposes of collective negotiations. The District and the Association filed exceptions to this decision.

The school districts in this case are Paso Robles Union School District (hereafter the Elementary School District) and Paso Robles Joint Union High School District (hereafter the High School District), located in San Luis Obispo County. Their combined average daily attendance (ADA) is 2,255. The High School District operates one high school which has an ADA of 881. The Elementary District operates four elementary schools. The geographical boundaries of the Elementary School District are contained within those of the High School District.

Each district is governed by its own board of trustees. Although these boards meet on the same day, each board meets and functions independently of the other. Traditionally the same individuals have served on both boards; however, a recent change in the election law has altered the constituencies of the boards.

The districts maintain their own separate budgets as well as payroll and accounting systems. The services of 41 employees are shared by the districts.[3] These employees are appointed separately by each board and are paid pro rata for their services by the appropriate district. The districts have bid together for supplies and machinery, but each pays for its own expenses.

The districts have a "common administration." One superintendent recommends hiring for both districts and negotiates on behalf of each district with respect to employer-employee

---

[3]Included among these shared employees are: the superintendent of schools, the superintendent of maintenance and operations, the director of transportation, the administrative assistant, psychologists, speech therapists, nurses, coaches, and utility and maintenance staff.

relations. All principals and administrators in both districts report directly to the superintendent. A combined total of 125 certificated personnel are employed by the districts. Certificated employees in both districts are paid according to the same salary schedule and receive the same fringe benefits. They are also governed by the same policies regarding leave of absence and holidays. Transfers by teachers are permitted between the districts, but tenure may be retained in only one district.

On five different occasions, voters in the districts have rejected proposals to unify the districts to form a common tax base. Two separate tax bases have been maintained as a result.

San Rafael

On April 1, 1976, the San Rafael Teachers Association (hereafter Association) requested exclusive representation of a unit of all certificated employees. The San Rafael Federation of Teachers (hereafter Federation) then filed a petition for intervention to represent a unit of certificated high school employees on April 21, 1976, On April 30, 1976, the San Rafael City Schools requested a unit determination hearing. On May 12, 1977, a hearing officer concluded that the High School District and the Elementary School District were one employer. The Federation took exception to the hearing officer's decision.[4]

[4]Both employee organizations requested that the Board expedite this case. On May 16, 1978, the Board denied the request. PERB Order No. Ad-30.

The San Rafael City High School District (hereafter the High School District) and the San Rafael Elementary School District (hereafter the Elementary School District) are known collectively as the San Rafael City Schools. The High School District operates two high schools and one continuation school with a combined ADA of 3,861. The Elementary School District operates nine schools at grade levels K-5 and two schools at grade levels 6-8. ADA for the Elementary School District is 3,840.

Article XI of the San Rafael City Charter provides that a "school department" for the City of San Rafael shall be comprised of all schools established and thereafter established within the city, the district, and the territories annexed for school purposes. It also vests governing authority in a single five-member board of education which administers both the High School District and the Elementary District.

The geographical boundaries of the High School District encompass the Elementary School District and the Dixie Elementary School District (hereafter the Dixie District). The latter, like the Elementary School District, "feeds" students into the High School District. The Dixie District, however, is governed by its own board of education and is funded by its own tax base. Voters in the Dixie District also participate equally with voters in the San Rafael districts to elect members to the San Rafael board of trustees. Consequently, voters in the Dixie District can exercise a voice in the administration of the separately funded Elementary School District.

When the San Rafael board of education meets, it keeps no separate agenda for the districts. Agenda items applicable to one district or the other are discussed and acted upon at the same meeting. Administration of both districts emanates from one central office, where all personnel records are maintained.

The High School District and the Elementary School District operate on totally separate budgets. They process a common payroll but keep separate accounting records. Each district is funded by its own tax base and bond elections. No commingling of funds occurs. Voters in both districts have rejected unification proposals on three separate occasions.

Certain employees work for both districts and are compensated pro rata for the time spent in the particular district.[5] These employees receive a single check from the San Rafael City Schools but the apportioned amount is deducted from the funding of the appropriate district.

The High School District employs 185 certificated employees while the Elementary School District employs 180 certificated employees. All are covered by the same personnel policy, salary schedule, fringe benefits, evaluation and grievance procedures, and workday schedule. Certificated employees do

---

[5]The following employees are shared by both districts: the superintendent, assistant superintendent of administrative services, director of personnel, adult education coordinator, and director of maintenance and operations, psychologist, nurse, and an elementary teachers also serving as a high school athletic coach.

not have an automatic right to interdistrict transfer. When an employee does transfer, however, he retains all previous seniority and tenure rights in the new district. An integrated seniority list of all employees is maintained in addition to the separate seniority lists for each district.

In previous litigation involving teacher lay-offs pursuant to Education Code Section 13443, hearing officers of the Office of Administrative Hearings twice held that the districts were two employers. On one occasion, it was determined that the districts together constituted a single employer.

DISCUSSION

The central issue before the Board in both cases is whether there is a single public school employer or two separate employers.

We are mindful that National Labor Relations Board (hereafter NLRB) case law would favor finding these districts to be a single employer in both cases.[6] However, we do not view NLRB decisions as appropriate guidelines in this area. Generally, the NLRB must address the issue of whether two entities constitute a single employer in one of two contexts: First, when there is a question as to whether the NLRB has

[6] See Sakrete of Northern California (1962) 137 NLRB 1220 [50 LRRM 1343]; Graphic Arts International Union Local 262, AFL-CIO (London Press, Inc.), (1973) 208 NLRB 37 [85 LRRM 1196].

jurisdiction to decide the dispute,[7] and second, when there is a question as to whether an employee organization is seeking to exert lawful economic pressure over an employer with which it has a dispute or unlawful economic pressure over an innocent second party.[8] Neither circumstance exists in the instant cases since neither this Board's jurisdiction[9] nor the lawfulness of economic pressure is at issue.

Nor do we find the litigation which arose under the Winton Act[10] prior to the passage of the EERA persuasive. In the first place, the results of the litigation were contradictory. In the second place, we have consistently held that we will give little weight to the "established practices of the employees" which antedate the passage of the EERA.[11]

In determining appropriate negotiating units we must always bear in mind the stated purpose of the EERA to foster

---

[7]The NLRB has jurisdiction only over disputes affecting interstate commerce. Thus, the NLRB has established certain minimum dollar standards, the amounts of which are irrelevant for this discussion, which an employer must meet before the NLRB will assert jurisdiction.

[8]The EERA does not contain any parallel provisions.

[9]Cf. Joint Powers Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program (6/26/78) PERB Decision No. 57.

[10]The Winton Act, former Education Code sections 13080 et seq., was repealed effective July 1, 1976 by the EERA.

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

harmonious employee-employer relations through collective negotiations. Meaningful negotiation can only occur where the employer has the authority and ability to reach agreement with the duly selected representative of its employees about those matters within the scope of representation. In the instant cases, each district is confined to the framework of its own tax base, budget and revenue limits. The budgets of each district are kept strictly separate and there is no commingling of funds. In each case, where the districts share staff, facilities or equipment, there is a strict apportionment of the expense between them. Each governing board is a separate policy-making body responsible to different constituencies. Moreover, and while not dispositive, voters in both cases have repeatedly rejected unification of the districts.

In the final analysis it is this separate economic status of each district coupled with the exclusive policy-making authority of each district which determines its ability to negotiate about those matters within the scope of negotiations. Accordingly, we conclude that the following are separate employers within the meaning of the EERA: Paso Robles Union School District, Paso Robles Joint Union High School District, San Rafael City High School District and San Rafael Elementary School District.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

1. The Paso Robles Union School District and the Paso Robles Joint Union High School District are two, separate and distinct employers for the purpose of meeting and negotiating.

2. The San Rafael Elementary School District and the San Rafael City High School District are two, separate and distinct employers for the purpose of meeting and negotiating.

Within 10 workdays after the employers post the Notice of Decision, the employee organizations shall demonstrate to the regional director at least 30 percent support in the stipulated units. The regional director shall conduct an election at the end of the posting period if: (1) more than one employee organization qualifies for the ballot, or (2) if only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

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

By: Jerilou Cossack Twohey, Member Harry Gluck Chairperson

Raymond J. Gonzales, Member, concurring:

I concur with this decision except to the extent that it appears to confuse the issue of whether there are one or two employers with the issue of "determining appropriate negotiating units," the latter issue being one which I take to be within the purview of Government Code section 3545.

Raymond J. Gonzales, Member

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

PASO ROBLES UNION SCHOOL DISTRICT and PASO ROBLES JOINT UNION HIGH SCHOOL DISTRICT,	
Employer,	Case Nos. LA-R-130 LA-R-703
and	
PASO ROBLES TEACHERS ASSOCIATION, CTA/NEA,	
Employee Organization,	PROPOSED DECISION
and	December 1, 1977
PASO ROBLES FEDERATION OF TEACHERS, AFL/CIO,	
Employee Organization.	

Appearances: Daniel C. Cassidy, Attorney (Paterson & Taggart), for Paso Robles Union School District and Paso Robles Joint Union High School District; Charles R. Gustafson, Attorney, for Paso Robles Teachers Association, CTA/NEA; Anne Fragasso, Attorney, for Paso Robles Federation of Teachers, AFL/CIO.

Decided by: Carol Ann Webster, Hearing Officer.

PROCEDURAL HISTORY

On April 1, 1976, the Paso Robles Teachers Association, CTA/NEA (hereinafter the Association) filed petitions for recognition with the Board of Trustees of the Paso Robles Union School District (hereinafter the Elementary District) and the Paso Robles Joint Union High School District (hereinafter the High School District) seeking recognition as exclusive representative of a single unit consisting of all certificated employees of both Districts.

On May 4, 1976, the Paso Robles Federation of Teachers, AFT Local 3553 (hereinafter AFT) filed petitions with both Districts seeking recognition as exclusive representative of two separate units of certificated employees, one in the High School District and one in the Elementary District.

On May 18, 1976, the superintendent, on behalf of both Districts, notified the Educational Employment Relations Board (hereinafter EERB) that the Districts doubted the appropriateness of both units and requested a unit determination hearing.

On March 10, 1977, a hearing was held before a hearing officer of the EERB. During the hearing the parties stipulated as follows:

Whatever the determination of the EERB as to whether the Districts are a single employer or two employers, the unit or units would include all certificated employees except the superintendent, principals, vice principals, administrative assistants/business managers, director of special projects (child development unit director) and all substitutes.

ISSUE

Whether the Paso Robles Union School District and the Paso Robles Joint Union High School District axe one or two employers within the meaning of Section 3540.1(k)[1] of the Educational Employment Relations Act (hereinafter EERA).

---

[1]Government Code Section 3540.1(k) states:

> "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

FINDINGS OF FACT

For over thirty years the Elementary District and the High School District have shared a common administration, each contributing to the cost. The two Districts share the cost of 41 employees, including nurses, the superintendent of maintenance and grounds, coaches, utility and maintenance personnel and a painter.

The Districts have separate budgets and separate accounting records, although there does seem to be some transfer of funds between the Districts.

Employees who work for both Districts must be appointed by the Boards of Trustees of both Districts. The evaluation forms are different between the Districts only in order to confirm the requirements of the Stull Act[2] which sets out guidelines for teacher evaluations. Certificated employees seeking to transfer between Districts are accommodated to the greatest extent possible and are permitted to retain their tenure until the transfer is complete. Upon completion of the move, the teacher must elect in which of the two Districts he or she wishes to have tenure, but may not choose to have tenure in both.

Traditionally, salary schedules have been identical in both Districts. Yet, the evidence shows that both Boards are required to pass on the salary package, and each District pays the salaries of its own employees and a pro rata share of the salaries of those who work for both Districts.

The Elementary District pays the High School District for use of busses belonging to the High School District.

---

[2] See Education Code Sections 44660-44665 (former Sections 13485-13490).

The two Districts have also participated in a joint venture with the City of Paso Robles in order to construct a swimming pool to be used for elementary, high school and city purposes. The arrangement was that the city would provide the capital for construction, and the pool would be built on school property.

Although the same individuals historically have served on both District Boards, a recent election changed the composition of the Boards. On April 1, 1977, four of the members of the combined Boards changed. It also appears that the constituencies of the two Boards are slightly different.

On five separate occasions the city leaders have placed a measure on the ballot seeking voter approval of a plan to unify the two Districts. On each of the five occasions the voters rejected the measure. Although there was some evidence introduced to explain the reason for this rejection of the proposal, the results stand for themselves.

The two Districts regularly meet jointly but maintain their separate agendas and retain separate authority to approve or reject any single item on the agenda.

Considerable evidence shows that due to the administrative makeup of the Districts, it would be more economical to negotiate with one unit comprised of all certificated personnel or classified personnel than to negotiate with separate units in each of the two Districts. The additional cost would potentially occur primarily in the area of negotiations as the Districts stated that it would be necessary to hire additional members for the negotiating team. Some evidence refuted the claim of increased costs, but that evidence was insufficient to dispel the likelihood of new staff requirements.

CONCLUSIONS OF LAW

The facts in Paso Robles Districts closely resemble those in Turlock School Districts, EERB Order No. Ad-18, October 26, 1977. In Turlock, the interrelations of operations was extensive. This relationship included a single telephone number and letterhead, one bus transportation system, common employees, centralized control of labor relations, one salary scale, very similar benefit structures, and one administration. The districts shared a negotiator, a superintendent and chief deputies.

In Turlock, the EERB found that the districts were two employers within the meaning of the Educational Employment Relations Act,, Analyzing criteria for determining who is an employer under the National Labor Relations Act, the EERB concluded that in the public sector the issue of control was determinative. In spite of the many joint activities between the districts, the individual boards retained final authority.

Although there are some factual differences in the case of the Paso Robles Districts, these differences are not sufficient to require a different result.

Given the strong policy enunciated in Turlock by the EERB to weigh heavily the aspect of control, the Paso Robles School Districts must be seen as two rather than one school employer within the meaning of the EERA.

In the Paso Robles School Districts there has been significant coordination of the two Districts, but at all times each individual Board has retained the power to approve or veto any action by the administration relating to matters within its jurisdiction. It is immaterial that prior to April 1, 1977 all of the members of the Boards were identical. Since this determination will effect labor relations between the Districts and their employees in the future, we must consider future as well as past relationships.

As in Turlock, there is no showing that the High School District shares or can share in the decision of the Elementary District to hire or fire an individual in that district or vice versa. Nor has there been any showing that the Elementary District has the right to direct both the work to be done and the manner in which the work shall be done in the High School District or vice versa. All employee wage and fringe benefit costs are paid separately by each district. Further, the superintendent and other top level personnel are the employees of both governing boards and accountable to each district separately for performance of services regarding each. They do not make the ultimate decisions regarding personnel matters; the governing boards do. The voters' decision to retain separate school districts reinforces the finding of separate employers. Care must be taken to avoid depriving governing boards of their vested authority or diluting their responsibility to their constituents.

Furthermore, because the constituencies are different, there is always the possibility that an individual member would find it necessary to vote one way on a proposal for joint action in his or her position as a member of one Board, and the opposite way as a member of the other Board. Therefore, in accordance with Turlock, because each board retains authority to render ultimate decisions only for its respective district, it cannot be said that they are one district within the meaning of the Act. This holding is not, however, to be construed in any way so as to preclude the voluntary establishment of multi-employer negotiating units.

PROPOSED ORDER

It is the Proposed Decision that the Paso Robles Union School District and the Paso Robles Joint Union High School District are two employers for the purpose of meeting and negotiating. The following certificated employee units are appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

1. In accordance with the stipulation of the parties, a unit in the Paso Robles Union School District including all certificated employees, excluding the superintendent, principals, vice principals, administrative assistants/business managers, director of special projects (child development unit director) and all substitutes.

2. In accordance with the stipulation of the parties, a unit in the Paso Robles Joint Union High School District including all certificated employees, excluding the superintendent, principals, vice principals, administrative assistants/business managers, director of special projects (child development unit director) and all substitutes.

The parties have seven (7) calendar days from receipt of this Proposed Decision in which to file exceptions in accordance with California Administrative Code, Tit. 8, Section 33380. If no party files timely exceptions, this Proposed Decision will become final on December 13, 1977, and a Notice of Decision will issue from the EERB.

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

The date used to establish the number of employees in the above units shall be the date of this Proposed 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: December 1, 1977.

Carol Ann Webster
Hearing Officer

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

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of:

SAN RAFAEL CITY HIGH SCHOOL DISTRICT,

Employer,

and

SAN RAFAEL ELEMENTARY SCHOOL DISTRICT,

Employer,

and

SAN RAFAEL CITY SCHOOLS,

Employer,

and

SAN RAFAEL FEDERATION OF TEACHERS,
CHAPTER 1077,

Employee Organization,

and

SAN RAFAEL TEACHERS ASSOCIATION, CTA,

Employee Organization.

Case No. SF-R-355

PROPOSED DECISION
(11/25/77)

Appearances: Richard Godino, Attorney (Breon, Galgani and Godino) for San Rafael City High School District, San Rafael Elementary School District, and San Rafael City Schools; Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg and Rogers) for San Rafael Federation of Teachers, Chapter 1077; Francis R. Giambroni, Attorney (White, Giambroni and Walters) for San Rafael Teachers Association, CTA.

Before Michael G. Coder, Ad Hoc Hearing Officer.

INTRODUCTION

This case arises out of a dispute as to whether the Joint Governing Board of the San Rafael City High School District and the San Rafael Elementary School District, collectively known as the San Rafael City Schools, are one employer or two employers within the meaning of Government Code Section 3540.1(k).

PROCEDURAL HISTORY

On April 1, 1976, the San Rafael Teachers Association/CTA/NEA (hereinafter referred to as the Association) petitioned the Board of Education of the San Rafael City Schools, by which name the San Rafael City High School District and the San Rafael Elementary School District are collectively known, for recognition as the exclusive representative of all certificated employees within the combined Districts. On April 21, 1976, the San Rafael Federation of Teachers (hereinafter referred to as the Federation) intervened in the aforementioned petition of the Association, claiming thirty percent support in a unit comprised of non-management certificated employees of the San Rafael City High School District.

On April 30, 1976, the San Rafael City Schools issued its decision challenging the appropriateness of the Association's request for recognition as well as the intervention of the Federation. It was not until January 6, 1977, that the San Rafael City Schools brought to the attention of the Educational Employment Relations Board the dispute as to whether there should be a combined unit for the San Rafael City High School District and the San Rafael Elementary School District or whether there should be a single unit administered by the Board of

Education for the San Rafael City Schools. On that same date the Board of Education notified EERB that they did not doubt the showing of majority support submitted by the Association in the combined Districts nor did they doubt the showing of majority support of the Federation in San Rafael City High School District, but did question whether there was a showing of interest presented by the Federation as to an overall unit for the two Districts.

On May 12, 1977, a hearing was held in the above-entitled matter. Due to confusion as to the status of the employer, notice which purportedly pertained only to the San Rafael City High School District (hereinafter High School District) was sent. The parties to this matter stipulated at the hearing to waive any procedural defects which may have existed in order to hear this matter as it related to the San Rafael Elementary School District (hereinafter Elementary School District) as well.

The parties also stipulated to the composition of the appropriate certificated unit or units irrespective of the ultimate decision in this proceeding.[1]

The above stipulations are accepted without further inquiry.

---

[1] A unit consisting of all certificated employees of the/each public school employer excluding as management: superintendent; assistant superintendent-administrative services; director of instructional services; director of personnel services; high school principals; middle school principals; elementary principals/district coordinators; adult education principals/district coordinators; coordinator of music; assistant principals/district coordinators; assistant principals; administrative assistants; director of maintenance and operations; supervisor of maintenance and operations; director of transportation; and the accountant. Also excluded are home instructors, adult instructors, substitutes and summer school teachers.

FINDINGS OF FACT

The City Charter of the City of San Rafael provides for a school "department" consisting of elementary and secondary schools as then established or thereafter established.

Two separate districts were formed, the San Rafael City High School District and the San Rafael Elementary School District. The Elementary School District lies entirely within the boundaries of the city and within the boundaries of the High School District. The boundaries of the Dixie Elementary School District (not a party to this hearing) and the San Rafael Elementary School District are coterminous with the geographical boundaries of the San Rafael City High School District. Voters in the Dixie Elementary School District elect their own separate Board of Education. The voters in the Dixie Elementary School District also cast votes for the Board of Education of the San Rafael City Schools to serve as the Board of Education for both the San Rafael Elementary School District and the San Rafael City High School District. The voters of the Dixie Elementary School District could conceivably elect the entire governing board for the neighboring San Rafael Elementary School District.

The average daily attendance for the San Rafael Elementary School District is approximately 3,840. The Elementary School District has nine kindergarten through fifth grade schools and two sixth through eighth grade schools. There are approximately 180 certificated employees. The average daily attendance for the San Rafael City High School District is approximately 3,861. There are two high schools and one continuation high school within the District. There are approximately 185 certificated employees within the High School District.

As a matter of long-standing history, the governing board of the San Rafael City High School and the San Rafael Elementary School District have been the same. This governing board provided for a common administration for the two Districts and in fact the two Districts have shared administrative personnel and facilities. The superintendent, assistant superintendent for administrative services, director of instructional services, director of personnel, adult education coordinator and director of maintenance and operations are employees common to the two districts. The salaries of the common employees are allocated to the two District budgets in accordance with the estimated amount of time that the employees spend working on matters either in the High School District or the Elementary School District. These common employees receive a single check from what is known as the San Rafael City Schools, but it is very strictly apportioned to the particular School District's budget from whence the money is actually derived.

Other certificated employees also work for both Districts and receive a joint check. These include the psychologist, nurse, and in various years has included an elementary school teacher who also served as an athletic coach for the High School District.

Although the question of the District unification has been presented to the voters pursuant to a valid ballot measure at least two and perhaps three times within recent history, each has failed. As a result, there are legally two separate school districts in the city of San Rafael, each with its own separate tax base. Total assessed valuation of the two School Districts vary as does the percentage levy which is placed on that valuation. Accordingly, the governing board known as the San Rafael City Schools adopts a separate budget each year for the San Rafael

Elementary School District and another budget for the San Rafael City High School District. Each District has a separate revenue limit which differs from the revenue limit of the other District. There have also been various revenue bond elections in the two Districts in different years. In some elections, the electors have passed the elementary school bond issue and not passed the high school issue. In other years the high school bond issue has passed but not the elementary school bond issue. As a consequence, both school Districts have entirely separate resources and economic existences, a factor which is of critical importance to employees of the two Districts. The budgets of the two Districts are kept strictly separate and there is no commingling of assets.

The two Districts voluntarily grant special consideration to employees of the "sister district" in determining whether or not they should allow a "transfer." It has been the informal policy of the School District to permit this transfer, although there is no law, rule or regulation which either expressly approves or disapproves of the practice. There is no transfer as a matter of right, and the employee from the sister School District can be rejected in favor of an employee from "outside" the School District who is more qualified.

Personnel records of the two School Districts are also kept in one central location and are integrated as to seniority. This seniority roster is of crucial importance when circumstances require the termination of various employees. On at least two occasions in the past it has become necessary to terminate various employees pursuant to former Section 13443 of the California Education Code. In a decision rendered April 30, 1975 by an administrative law judge of the Office of Administrative Hearings, it was determined that there were two separate School Districts. In May of 1976 another administrative law judge of the Office of Administrative Hearings determined that the San Rafael City Schools was in fact a single School District. Each of the aforementioned proposed decisions of the administrative law judge had the practical effect of reducing the number of employees who were subject to termination pursuant to former Education Code Section 13447.

The decision of May 1976 noted above, was based in part on an earlier action brought on October 6, 1975 by the Marin County Federation of Teachers, Local 1077 (the predecessor in interest to the Federation). The Federation sought a writ of mandate compelling the Board of Education of the San Rafael City Schools to establish two Certificated Employee Councils pursuant to the since repealed Winton Act.[2] It was the determination of Superior Court Judge David Menary that the San Rafael Board of Education is one public school employer within the meaning of the prior Education Code Section 13081(b). Although not essential to the determination in that matter, the judge also found that the School Districts identified in the petition for writ of mandate as the San Rafael High School District and the San Rafael Elementary School District did not exist.

CONTENTIONS

The Association and the Board of Trustees argue that the Board of Trustees is <u>the</u> employer. The Federation concedes the status of the Board of Education as an employer, but argues that the Educational Employment Relations Act provides that the Districts are also employers.

---

[2] Former Education Code Sections 13080 <u>et seq</u>.

The Federation further seeks to have the EERB determine in a unit hearing that a "most appropriate" unit of certificated employees compels the result of two separate units. The Federation maintains a unit of non-management certificated employees of the High School District is a more appropriate unit than a combined unit of certificated employees of the two Districts.

CONCLUSIONS OF LAW

Government Code Section 3540.1(k) provides;

> "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

The statute is capable of two constructions as urged by the respective parties. The position advanced by the Board of Education and by the Association is to the effect that the ultimate employer or decision maker is the employer. The Federation contends that from the statute one can find that both the Board of Education and the Districts can be considered employers for the purposes of the Act.

When the language of a statute is susceptible to more than one meaning, it is the duty of the tribunal to ascertain the intent of the Legislature.[3] The initial place to look for legislative meaning and intent is to the words of the statute itself.[4] It is the general rule that the conjunction "or" indicates disjunctive or alternative.[5] The acceptance

---

[3] Stillwell v. State Bar, 29 Cal. 2d. 119.

[4] Moyer v. Workman's Compensation Board, 10 Cal. 3d. 222.

[5] Hough v. Ford, 44 Cal. 2d. 706.

of the general rule of statutory construction noted above is made more compelling by another tenant of statutory construction; that cognizance should be taken of determinations of similar statutes which are "legislative models." Use of National Labor Relations Board precedence was expressly sanctioned by the California Supreme Court in Firefighters Union v. City of [6]

The NLRB has long resolved the question of whether to assert jurisdiction by treating separate concerns which are closely related as being a single employer. The principal factors weighed by the NLRB is deciding whether sufficient integration exists are:

1. Interrelation of operations;
2. Centralized control of labor relations;
3. Common management;
4. Common ownership or financial control.[7]

All of the above criteria favor the recognition of the Board of Education as the single employer.

The interrelation of operations is extensive. The District utilizes a single central telephone number, letterhead, common top-level administrative employees, and common facilities. In short, the District operates as a single integrated unit. There is a centralized control of labor relations, with a history of consultations with a common Certificated Employee Council which was upheld by the Marin County Superior Court. The common ownership or financial control rests in the Board of Education, the same five individuals for the San Rafael City High School District and the San Rafael Elementary School District.

[6] 12 Cal. 3d 608, Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976.

[7] See Radio and T.V. Local 1264 v. Broadcast Service, 380 US 255, 256 (1965) •

The District does not exist as an employer, but rather as a geographical and grade-level division of the Board of Education. The Districts cannot function without the motivating factor of the Board of Education which shall ultimately determine those matters within the scope of representation as defined by Government Code Section 3543.2.

For these reasons, it is decided that the Board of Education, commonly known as the San Rafael City Schools, is the "public school employer" within the meaning of Government Code Section 3540.l(k).

Turlock School District (Order No. AD-18, October 26, 1977) is factually distinguishable from the present case. In Turlock, the EERB found that two distinct school districts with (1) separate governing boards containing no common membership, (2) generally separate employees, and (3) separately adopted although identical personnel policies are "separate employers" under the Act notwithstanding their daily operation under a common administrative staff.

In part, the Board utilized the "sufficient integration" test applied herein to reach its decision. Paramount among the many factual differences between the two cases is the governance in San Rafael by a single Board of Education with common membership and a history of common authority in labor relations.

PROPOSED ORDER

It is the Proposed Order that:

1. The Board of Education of the San Rafael City High School District and the San Rafael Elementary School District is the public school employer within the meaning of Section 3540.l(k).

2. The San Rafael City High School District is not a public school employer within the meaning of Section 3540.1(k).

3. The San Rafael Elementary School District is not a public school employer within the meaning of Section 3540.1(k).

4. The certificated unit stipulated as appropriate for meeting and negotiating, providing an employee organization becomes the exclusive representative is a unit of all certificated employees of the San Rafael City High School District and the San Rafael Elementary School District excluding all management and supervisory employees, including but not limited to superintendent; assistant superintendent - administrative services; director of instructional services; director of personnel services; high school principals; middle school principals; elementary principals/district coordinators; adult education principals/district coordinator; coordinator of music; assistant principals/district coordinators; assistant principals; administrative assistants; director of maintenance and operations; supervisor of maintenance and operations; director of transportation; and the accountant. Also excluded are home instructors, adult instructors, substitutes and summer school teachers.

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 stipulated unit. The Regional Director shall conduct an election at the end of the posting period if the employer does not grant voluntary recognition.

Pursuant to EERB Regulation 33390, California Administrative Code, Title 8, Section 33390, this decision of the Regional Director shall

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

become final on December 7, 1977, unless a party files a timely statement of exceptions. See California Administrative Code, Title 8, Section 33380.

The date used to establish the number of employees in the above units shall be the date of the Proposed 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

Mićhael G. Coder
Ad Hoc Hearing Officer