

On November 2, 1977, a hearing officer of the Public Employment Relations Board (hereafter Board) issued a proposed decision which found the following unit to be appropriate:

...all certificated employees including all full-time and part-time regular or contract certificated plus part-time certificated employees who have taught at least the equivalent of three semesters of the last six semesters inclusive and excluding all management, supervisory and confidential employees, substitutes and summer school instructors.

The District excepted to that portion of the hearing officer's proposed decision that included part-time certificated instructors in the unit. It also objected to the fact that one hearing officer conducted the hearing and a different hearing officer issued the proposed decision.

While the exceptions to unit composition before the Board relate only to the inclusion of part-time instructors in a unit of all certificated employees, the Board has jurisdiction over the question of appropriateness of the total unit.² Therefore, while no exceptions to the exclusion of summer school

2GOV. Code sec. 3540 provides, in pertinent part:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and

instructors were presented, it is a proper subject of scrutiny for the Board.³

employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. (Emphasis added.)

Gov. Code sec. 3541.3(a) states:

The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

Gov. Code sec. 3545(b)(1) states:

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

³While party's failure to except to an issue serves as a waiver of that party's right to except, it does not preclude the Board from reviewing unappealed matters. Cal. Admin. Code tit. 8, 32320(a) provides:

(a) The Board itself may:

(1) Issue a decision based upon the record of hearing, or

(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.

FACTS

Part-Time Instructors - Fall and Spring Semester

Rio Hondo College is a community college offering Associate of Arts and Associate of Science degrees, and also has a transfer program of lower division courses leading to a Bachelor of Arts at other institutions of higher learning. Average daily attendance was approximately 19,061 in April 1976. The college operates both day and evening sessions, many of the courses being offered at both, during fall, spring and summer semesters.

The college employs 244 full-time, and 303 part-time instructors, exclusive of summer semester faculty. The majority of the regular year day courses are taught by full-time instructors and the majority of the evening courses are taught by part-time instructors. However, part-time instructors may teach in the day session, and full-time instructors may teach in the evenings. Also, full-time and part-time instructors may teach different sections of the same course (each "section" of a course covers the same subject material but is taught at a different time and place). Photography 15-A, for example, was taught in three different sections; two by full-time instructors and one by a part-time instructor. Students enrolled in credit courses earn the same credit irrespective of whether the course or section is taught by a full-time or part-time faculty member, or whether it is taught in the fall, spring or summer semester. Theoretically,

it would be possible for a student to earn an Associate of Arts or Associate of Science degree by taking courses only from part-time instructors.

While only the full-time instructors are required to maintain formal office hours, both full-time and part-time instructors are available to confer with students upon request.

There are faculty meetings at both campus and departmental levels. These are held during the day hours. There may be only two or three campus-wide meetings a year. While part-time instructors are not required to attend them, they are welcome. Departmental meetings are held more often and part-time instructors attend these "quite frequently."

While only full-time faculty serve on the college curriculum committee, part-time faculty may, and do, make comments and submit proposals to this committee in the same way as do full-time instructors.

When a campus committee was established to develop a report for an accreditation team reviewing the college programs, a part-time instructor served on this committee.

At the time of the hearing, membership in the academic senate was limited to full-time instructors. However, an academic senate committee report, completed in spring 1976, recommended to the full academic senate that its constitution be amended to provide for membership or representation of part-time instructors. This recommendation was passed unanimously by the academic senate.

Part-time as well as full-time faculty appear to be eligible for funds for participating in professional activities. A part-time faculty member who attended a "field trip" was authorized to receive expenses.

The evaluation procedures for full-time and part-time instructors are similar, but not identical. There are two basic phases of evaluation for a full-time instructor. During the first two probationary years, the department chair plays an active and substantial role in the evaluation process. After successfully completing probation, full-time faculty are generally evaluated under a self-evaluation format. Part-time instructors are evaluated at least once a year. The departmental chair also plays the principal role in these evaluations.

The compensation of part-time faculty is, in effect, 50 percent of the full-time instructors' compensation for any given position on a salary schedule or any given assignment. Both full-time and part-time instructors receive additional compensation for additional academic degrees.

Hiring procedures for full-time and part-time instructors generally differ. The selection of full-time instructors involves a publicized search and a multi-level selection process involving a screening committee and the ultimate decision of the upper college hierarchy. Part-time instructors are usually selected by the department chair alone, although a search may be conducted for a part-time instructor with special qualifications.

Summer school. There is a six-week summer semester in which both day and evening classes are offered. There may also be a summer post-session following the six-week summer session. Though the record is limited on these sessions, a District witness testified that the course he taught during a regular semester was also given in a post-summer session. Both full-time and part-time instructors teach summer school courses. The factors affecting who is assigned to teach summer school are availability of the class, enrollment and the desire to teach the class. At least some of the courses offered during the summer session are also offered during the fall and/or spring semesters. Students can earn the same degree credit taking summer courses as by taking regular year courses.

A memorandum of understanding between the District and the Association for the 1976-77 fiscal year, entered into June 30, 1976,⁴ provided for faculty compensation and applied "to all Rio Hondo College certificated employees, full and part time, excluding management and executive positions." This agreement provided for a 6.1% salary increase for all the above-described employees who continue employment from the 1975-76 to the 1976-77 fiscal year. The three-page memorandum of understanding made no specific exclusion other than the above-mentioned.

⁴This agreement apparently was voluntarily entered into as an "interim" measure pending resolution of the unit dispute. The District states its purpose was to "preserve the status quo."

DISCUSSION

The Inclusion of Part-Time and Full-Time Instructors in the Same Negotiating Unit

In fashioning an appropriate negotiating unit of instructors, the Board is guided by section 3545 of the Educational Employment Relations Act (hereafter EERA) .5 Section 3545(a) reads:

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.

Based on an examination of the evidence adduced at the hearing, the Board determines that part-time instructors are appropriately included in a negotiating unit with full-time instructors. This conclusion is reached based on a finding that both full-time and part-time instructors possess a community of interest based on conditions of employment which indicate that they share similar negotiating interests. In Sweetwater Unified School District (11/23/76) EERB Decision No. 4, the Board indicated that community of interest must be ascertained by analyzing a variety of interest factors, and recognized that prominent among these is job function. In the present case, the Board finds persuasive the fact that the principal professional responsibility, or job function, of Rio Hondo college instructors is to teach students at the community college level in the classroom setting. Full-time and

⁵The Educational Employment Relations Act is codified at Gov. Code sec. 3540 et seq. Hereafter, all statutory references are to the Government Code unless otherwise indicated.

part-time instructors teach identical courses awarding identical course credit. A related element of the learning process is the opportunity for students to confer with their instructors individually, apart from the in-class lecture, and it is noted that both full-time and part-time faculty are available for student conferences. While the availability of full-time instructors is more structured and perhaps greater because they hold office hours, this is a distinction more of degree than kind and is accordingly not controlling.

The evidence also indicates that part-time faculty participate in non-instructional elements of the college's academic program. They can and do attend faculty meetings, especially at the departmental level. They also provide input into the curriculum planning process and may, and on at least one occasion did, serve on a course evaluation committee.

It is also significant that both part-time and probationary full-time instructors are evaluated under a procedure in which the department chair plays a substantial role in reviewing the instructor's performance.

While the regular pay for part-time instructors differs from that of full-time instructors, there is a direct relationship between the two (one a percentage of the other) and both are afforded additional compensation based on acquisition of additional academic degrees.

The Board accords little weight to whether non-full-time faculty are eligible for tenure. Evidence was presented that the Superior Court (Superior Court for County of Los Angeles,

Peremptory Writ of Mandamus No. CA 000 307) held that part-time instructors in this District may be eligible for permanent status. This decision apparently has been appealed by the District. As the Board noted in Los Rios Community College District (6/9/77) EERB Decision No. 18, there is conflicting authority on this matter among California District Courts of Appeal, and the issue is now before the California Supreme Court.⁶ For this reason, the Board declined to assign controlling weight to the factor of tenure in evaluating community of interest.

Also in Los Rios, the Board decided that both full-time and part-time instructors should be in the same negotiating unit. There, as here, the evidence did not establish a precise or total overlapping of interests. The Board considered and balanced all community of interest factors, and reconciled them in favor of not dividing the negotiating interest of the part-time and full-time instructors by excluding part-time instructors from the unit. The rationale of that part of the Los Rios decision is generally applicable to the present case:

Finally, while differences do exist in the working conditions of full- and part-time instructors, their job duties and responsibilities are virtually identical. In many cases, both teach identical courses; both counsel students in the same fashion. Both are evaluated in a similar fashion,

⁶See Fervner v. Harris (1975) 45 Cal.App.3d, 363, 368; Vittal v. Long Beach Unified School District (1970) 8 Cal.App.3d 112; Coffey v. Governing Board of San Francisco Community College District (1977) 66 Cal.App.3d 279; Peralta Federation of Teachers v. Peralta Community College District, (1977) California Supreme Court hearing granted 6/23/77.

often by the same people, and enjoy many of the same benefits and privileges. Many of those fringe benefits not shared with full-time instructors are legitimately the subject of negotiations. Moreover, while some of the part-time instructors have their primary employment relationship elsewhere, many have their primary employment with the District either as full-time instructors or solely as part-time instructors. 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.

Section 3545(a) also requires that the Board consider efficiency of operations and established practices in determining an appropriate unit. The only related evidence found in the record is the opinion testimony of a District witness.

If we pursue the Vogel decision [writ of mandamus to reclassify part-time instructor who taught a specified number and frequency of semesters or quarters as either a contract or regular employee] in reduction of staff and in the opinion admittedly of, of a hearing officer, it would have been, this college would have been directed to reassign an instructor who is currently a full-time contract employee to a position which although he is credentialed to teach in our opinion is not qualified to teach and, therefore, would be to the detriment of the students, in order to retain the part-time instructors. This would be one of the administrative problems that we would encounter if indeed we had essentially competition between part-time temporaries under 1337.5(sic) and the full-time instructors.

The Board finds no relevance in this testimony. The possibility that acquisition of tenure rights may require the District to effect assignments of unqualified instructors is,

if true, unrelated to the matter of placement in a particular representation unit. Presumably, that legal obligation would exist irrespective of whether part-time faculty are placed in the same unit as full-time instructors, in a separate unit or in no unit.

Furthermore, the opinion expressed by the witness is by his own admission credited to have little weight. He also stated regarding possible administrative problems in a combined full- and part-time unit:

Again it's speculation. I'd rather not answer anymore on that question.

Nothing in the record supports a finding that placing part-time instructors in a unit with full-time instructors would adversely impact on the efficiency of the District's operations.

Recently, the Board in Hartnell Community College District (1/2/79) PERB Decision No. 81, revised its formula governing inclusion of part-time employees in a unit.⁷ Since all active members of the classification are affected by the salaries, hours, and terms and conditions of employment that are within the scope of negotiation, and by the terms of the negotiated agreement, the Board decided to include all employees on the payroll irrespective of previous periods of employment. The Board will adhere to that policy in this case.

⁷Previously, only part-time employees who taught in three of the past six semesters were included in the unit, Los Rios Community College District (6/9/77) supra, EERB Decision No. 18.

Summer Session Instructors

Application by the Board of the unit determination criteria set forth in section 3545(a) also indicates that summer semester instructors should be included in the unit with full and part-time instructors. The hearing officer excluded summer semester instructors in reliance on Los Rios. In that case, the Board decided that summer school teachers lacked sufficient community of interest with regular full-time instructors. To the extent that Los Rios establishes a presumption that it is inappropriate to include summer school teachers, it was reversed in Hartnell. The proper test for the inclusion or exclusion of certificated instructors is found in section 3543.5: community of interest, efficiency of operations and representation history.

The evidence presented in this hearing indicates that the principal job function of instructors who teach the summer semester is to teach students who are enrolled in the educational program of the college. Almost all of the instructors who teach summer semester are also regular year instructors. Summer school courses, like regular year courses, are offered in both day and evening sessions and also like regular year courses, are available for credit. Many of the courses are, in fact, the same as regular year courses. In sum, the summer semester is an integral part of Rio Hondo Community College's educational program.

The Board recognizes that although the record in this case fails to contain complete information regarding all community

of interest factors, there is sufficient evidence to find a fundamental community of employment and negotiating interests between those who are Rio Hondo's instructors in the summer semester and those who are the instructors in the fall and spring semesters.

Similarly, there is no evidence indicating that efficiency of operations or established practices argue for exclusion of summer semester instructors. Furthermore, the inclusion of those teaching summer school only with regular teachers who also teach summer school may result in eliminating a potentially major negotiations problem for the employer. If summer school teachers are placed in a separate unit, the following questions must inevitably arise:

1. Are regular teachers who teach summer school eligible to negotiate their summer school wages, hours and employment terms in the "regular" unit, the summer school unit, or both?

2. Would the District be obligated to negotiate with their regular faculty in two separate units?

3. If the summer school issues are bifurcated, that is, if summer school issues are negotiable in the regular unit for regular teachers who teach summer school and also negotiable for summer school "only" teachers in a separate unit, would the District be required to bargain on a different basis, and possibly with two different employee organizations, on the same subjects?

While the Board does not intend by this decision to indicate its answer to any of these questions, they suggest the

strong possibility that efficiency of District operations may actually be advantaged by the inclusion of summer school teachers in the "regular" certificated unit.

As noted in the statement of facts, the only evidence of established practice is the existence of the agreement executed in 1976 which applied to all certificated employees, except managerial personnel. If little or no weight is to be accorded this agreement, as the District urges, it is nevertheless true that no evidence of past practice was produced to contradict the finding of sufficient community of interest.

The District has offered no evidence that its interests have been prejudiced by the substitution of hearing officers. The Board finds no reason to hold differently here than it did in Fremont Unified School District (4/5/78) PERB Order No. Ad-28, in which we concluded that the hearing officer who renders the proposed decision need not be the same hearing officer who heard the evidence.

ORDER

The Public Employment Relations Board ORDERS that:

(1) An appropriate unit for negotiation in the Rio Hondo Community College District shall include all certificated employees of the District who are regular full-time and part-time teachers, including those who also teach summer school, and all teachers who teach summer school only; except management, supervisory and confidential employees shall not be included in the unit.

Within 10 workdays after the employer posts the Notice of

Decision, the employee organization shall demonstrate to the regional director at least 30 percent support in the negotiating unit.

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. Voluntary recognition requires majority proof of support in all cases. See Government Code section 3544 and 3544.1. The date used to establish the number of employees in the above units shall be the date of this decision unless another date is deemed appropriate by the regional director and noticed to the parties. In the event another date is selected, the regional director may extend the time for employee organizations to demonstrate at least 30 percent support in the negotiating unit.

By: Harry Gluck, Chairperson Jerilou Cossack Twohey, Member

Raymond J. Gonzales, Member, dissenting in part:

I dissent from the majority's decision to place all part-time community college instructors in a unit with full-time instructors.

I see no reason to repeat¹ in detail my reasons for believing that part- and full-time teachers not only do not share a community of interest, but have conflicting interests. The facts in this case do not differ significantly from those in Los Rios, and I adhere to my dissent in that case and to my elaboration of that position in Hartnell.

The majority places great weight on the fact that part- and full-time instructors have a common job function. While I agree that job function is important in determining community of interest, I disagree with the majority's almost total reliance on this single factor.²

First, the job functions of part- and full-time faculty do differ. While both groups teach courses, full-time instructors are also expected to take an active role in academic governance; they are expected to attend faculty meetings and participate on committees. These activities are part of their job. Part-time instructors, on the other hand, are not expected to play any role in academic governance. While they are not prohibited from some participation and some do participate voluntarily, involvement in academic governance is not a job function of part-time teachers.

¹See Los Rios Community College District (6/9/77) EERB Decision No. 18, dissenting opinion; Hartnell Community College District (1/2/79) PERB Decision No. 81, dissenting opinion.

²The majority decision also mentions wages and evaluation procedures. However, these factors may also be used to illustrate the dissimilar interests of the two groups. Thus, while the wage rates may be related, part-time instructors receive much less pay. Also, part-time faculty are paid on an hourly basis, while full-time faculty are salaried. Evaluation procedures differ radically for part-time and regular full-time instructors.

Second, the purpose of examining community of interest in making unit determinations is to group together employees with mutual interests in terms and conditions of employment so that conflicting interests do not impede effective representation. Job function has been considered a factor in determining community of interest because it is often indicative of such mutual interests. But job function is only one factor among several. In this case, any similarity of interests stemming from a common job function is outweighed by disparate interests arising from the differences in employment conditions of part- and full-time instructors.

Such differences are likely to cause part- and full-time instructors to have different negotiating priorities, especially with respect to economic issues. As an example, part-time teachers who work full-time elsewhere may not be interested in receiving fringe benefits, such as health plans, from the District since they may already receive such benefits at their regular place of employment. Thus, they may push for putting more money into wages at the expense of additional fringe benefits. Full-time instructors, on the other hand, may place a much higher priority on fringe benefits.

These differences may cause an elected exclusive representative difficulties in attempting to represent the unit fairly.

³The record indicates that at least two-thirds of the part-time instructors are employed full-time elsewhere.

Such difficulties may be exacerbated by the fact that full-time teachers, those whose primary employment relationship is with the District and who thus have the largest stake in collective negotiations with the District, are in the minority in the unit created by the majority decision.⁴ Obviously, any exclusive representative is going to give high priority to the concerns of the majority part-time teachers; failure to do so would be to risk decertification. Of necessity, different concerns of full-time instructors will be given lesser emphasis.

Employment relations cannot be enhanced by creating a unit in which the economic concerns of a core group of employees are likely to be subordinated to the substantially different concerns of a more peripherally employed group of employees. Yet the majority has created such a unit. I believe that a unit including both part- and full-time instructors is contrary to the overall purpose of the EERA in that it does not "promote the improvement of personnel management and employer-employee relations."⁵

I also dissent from the majority's decision to include summer school teachers in the unit with full-time teachers. In the first place, no party excepted to the hearing officer's decision that summer school teachers should be excluded from the unit. While the Board may have the power to examine all aspects

⁴At the time of the hearing, there were 244 full-time and 303 part-time instructors.

⁵Government Code section 3540.

of a case before it, including findings to which no exceptions have been filed, I believe the Board should exercise a great deal of restraint in making determinations on such matters unless such findings clearly contravene the EERA. See Monterey Peninsula Community College District (10/16/78) PERB Decision No. 76, dissenting opinion. The majority in this case treads on dangerous ground by going behind findings that are not excepted to by the parties. This same majority has shown a penchant for going behind stipulations that are not contrary to the EERA. My colleagues contradict their role as arbiters of employee-employer relations disputes by in effect creating disputed issues where there are none.

Secondly, the majority places summer school instructors in the unit based on almost no information with respect to community of interest factors. The record contains no facts on summer school instructors' method of compensation, wages, hours, employment benefits, supervision, qualifications and skills, and contact with other employees. The record does indicate that both summer school and full-time instructors teach courses for credit and that some of these courses are identical. The majority apparently believes that this similarity of job function, by itself, is sufficient to overrule the hearing officer and find a community of interest between summer school and other certificated employees. I disagree, and in the absence of any relevant evidence, would sustain the hearing officer's uncontested decision.

I concur in the majority's decision that the substitution of hearing officers was not improper in this case.

Raymond' J. Gonzales, Member

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:)	
)	
RIO HONDO COMMUNITY COLLEGE DISTRICT,)	
)	
Employer,)	
)	
- and -)	Case No. LA-R-111
)	
RIO HONDO FACULTY ASSOCIATION, CTA,)	<u>PROPOSED DECISION</u>
)	
Employee Organization.)	November 2, 1977
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Appearances; John J. Wagner, Attorney (Wagner and Wagner), for the Rio Hondo College Community College District; Robert M. Dohrmann, Attorney for the Rio Hondo College Faculty Association, CTA.

Decided by: Carol Ann Webster, Hearing Officer.

PROCEDURAL HISTORY

On April 1, 1976, the Rio Hondo College Faculty Association, California Teachers Association (Association) requested recognition as exclusive representative of a unit consisting of all certificated employees in the Rio Hondo Community College District (District), excluding supervisory, management and confidential employees.

On May 5, 1976, at a special meeting of the Rio Hondo Community College District a resolution was adopted doubting the appropriateness of the unit as requested and specifically requiring that the certificated employees unit be limited to only full-time employees. The District also expressed doubt that CTA had majority support and requested an election in a response filed on May 6, 1976. The District advised CTA and the Educational Employment Relations Board (EERB) accordingly.

On Thursday, June 3, 1977, a hearing was conducted by EERB Ad Hoc Hearing Officer Philip Tamoush at the Rio Hondo Community College District office. At the hearing the parties entered into the following stipulations:

1. That the District is a public employer under Section 3540.1 of the Educational Employment Relations Act (EERA).
2. That the Rio Hondo College Faculty Association is an employee organization under Section 3540.1 of EERA.

ISSUES

1. Whether part-time¹ certificated employees should be included in a unit of regular or contract full-time and part-time certificated employees.
2. Whether summer school instructors are appropriate in the unit.

FINDINGS OF FACT

Part-Time Certificated Employees

There is no exclusive division of part-time instructors teaching only at night and full-time instructors teaching only daytime classes. Over half of the teaching staff in the District is made up of part-time instructors teaching 60 percent or less of a full load. Part-time instructors are paid 50 percent of full-time faculty pay pro rata and do not receive fringe benefits or participate in the State Teachers Retirement System as do their full-time counterparts. In the past, job security for part-time teachers has been tied to enrollment and they could be terminated whenever class size decreased beyond a certain point. Evaluation procedures are somewhat different between part-time and full-time instructors.

Previously established practices between the District and the part-time instructors have differed from practices between the District and full-time

¹ "Part-time" as used herein refers to non-contract or non-regular employees teaching 60 percent or less of a full teaching load. (These employees are also referred to as "temporary" in the record.)

teachers, but the evidence shows that some of these differences are beginning to blur. An example of such established practices include the exclusion of part-time instructors from the Faculty Senate. The full-time faculty has recently voted to include part-timers in the Senate.

Both part-time and full-time instructors are charged with the responsibility for educating the District's students. The students are generally unaware of the status of the instructors and receive the same value of instruction irrespective of the status of their instructor.

The evidence shows that in the past the District has selected representatives of more than one employee organization in accordance with provisions of the Winton Act. The evidence and arguments that consolidation of the two teaching classifications will interfere with efficiency of operation are unconvincing and address themselves to activities of the California courts relating to tenure for part-time instructors, an issue on which California Courts of Appeal are in conflict.

Summer School Teachers

Summer school teachers are either hired from the outside solely for the summer with no guarantee of future employment with the District, or they are regular instructors seeking to supplement their income. In either case, there is no promise on the part of the District that the teacher will be given special consideration for further assignments either in the regular school year or subsequent summer school sessions.

The evidence on this category of certificated employees is sparse as concerns pay scales and supervision. Regarding tenure, Education Code Section 87474 provides that summer school employment does not count toward eligibility for permanent status with the District.

DISCUSSION AND CONCLUSIONS

The question of whether or not part-time evening instructors should belong to the same unit as full-time day instructors, full-time evening instructors, and part-time day instructors was answered affirmatively in the Board Decision Los Rios Community College District.² The one limitation on inclusion in the unit was that part-time instructors must have "taught at least the equivalent of three semesters of the last six semesters inclusive"³ in order to be included in the unit with full-time instructors. Because the Board has established the precedent to include part-time instructors in the unit, so long as they meet the additional requirement, the burden is on the District to show that the facts in Rio Hondo justify a departure from the general rule. The District has not met this burden.

In Los Rios, the Board analyzed the legislative mandate put forth in Government Code Section 3545(a)⁴ in conjunction with NLRB

² EERB Decision No. 18, June 9, 1977.

³In the Los Rios decision considerable attention was given to the question of whether or not part-time instructors would have the necessary continuity of employment to warrant inclusion in the unit. The Board held that "we think that persons who continually, semester after semester, teach in the community college have demonstrated their commitment to and interest in its objectives. It seems unlikely that persons who have only a minimal interest in the community college will continually seek or obtain employment there." In the absence of testimony or argument offering a different measure of continuity we adopt the measure established in Los Rios. See Decision No. 18, at page 12.

⁴ The Government Code Section 3545(a) reads as follows: 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.

precedent.⁵ The Board found that, in general, NLRB analysis on the subject of unit placement is not applicable to the California community colleges whose emphasis is on teaching rather than research and publication.

Furthermore, the NLRB gave great weight to tenure as an indication of community of interest.⁶ Conversely, the EERB in Los Rios elected to give little weight to tenure because in California the court has yet to decide the relationship between the right to tenure and employment status as part-time.⁷

Another factual distinction between New York University and Los Rios was that the faculty participation in the operation of the college was much greater at New York University due to the practice of shared governance. Shared governance is limited by law in California as concerns admissions⁸ and academic standards for probation, dismissal,

⁵ The leading NLRB case dealing with unit placement is New York University, (1973), 205 NLRB 4, 83 LRRM 1549, which did not include part-time instructors in the unit unless they were in "tenure track" positions.

⁶New York University, at 1552.

⁷ In fact, part-time community college instructors have been found to be eligible for tenure in many districts. See Fervner vs. Harris (1975) 45 CA 3d, 363, at 368, Vittal vs. Long Beach Unified School District (1970) 8 CA 3d. There has also been conflicting authority in California on temporary instructor's ability to achieve tenure. See Balen vs. Peralta Junior College District (1974) 11 CA 3d 821; Coffey vs. Governing Board of San Francisco Community College District (1977) 66 CA 3d 279; Peralta Federation of Teachers vs. Peralta Community College District, (1977) 69 CA 3d 281.

⁸ Education Code Section 76000 (25503) provides that any person possessing a high school diploma or the equivalent may attend the community college.

readmission and graduation.⁸

It can, therefore, be said that the EERB has considered NLRB precedent and rejected it as inapplicable to California Community College Districts.

In Los Rios the Board established criteria by which we can determine whether or not a community of interest exists between part-time evening and other certificated personnel. These criteria include whether or not there is a relationship between the pay scales of the two classifications of teachers. In Rio Hondo, part-time teachers are paid 50 percent of full-pay pro rata. This is undeniably a relationship and we find that this requirement has been met.

Another criterion in Los Rios was supervision. While it appears that the supervision of part-time teachers is different from that of regular teachers there is so little evidence on the matter that it is impossible to determine whether or not this difference is sufficiently great to defeat the community of interest presumed in light of the Los Rios decision.

Finally there was the criterion of job function.⁹ There is no doubt that the purpose served by part-time faculty is equally important to District students as that purpose served by the daytime instructors. Instructing students is, in fact, the primary reason for the existence of the District.

⁸ Education Code Section 72285 (1010.6)1.

⁹ In Sacramento City Unified School District, EERB Decision No. 30, September 20, 1977, at page 9, the Board held: "A separate unit is not warranted merely because a group of employees share a community of interest among themselves, when that homogeneous group forms only a part of a larger essentially homogeneous group sharing similar conditions of employment and job functions."

SUMMER SCHOOL INSTRUCTORS

In Los Rios the Board considered the question of whether or not summer school instructors should be included in the unit of regular instructors. There, the facts indicate that the hiring procedures were similar to those in Rio Hondo. Instructors included both regular year instructors and teachers from the outside. The Board found that there was not a sufficient community of interest between the summer session and regular year teachers due to separate pay scales, lack of assurance of continued employment and legal prohibitions on accumulation of tenure, and excluded them from the unit. This then sets up a presumption that summer school teachers are inappropriate in the unit and the burden of proof is on the party seeking to include them in a unit of regular teachers. This burden was not met.

The only argument put forth regarding appropriateness of summer school teachers in the unit was that since summer school teachers include regular year teachers, they should be included. The fact that some of the summer school teachers are also regular year faculty does not support a finding of a common community of interest per se. No additional facts have been presented to demonstrate a relationship between salary, benefits, supervision or evaluation procedures, which could establish a common community of interest between the two groups. Since no evidence was offered as to why these teachers share a community of interest with regular teachers, the presumption remains and summer school teachers shall be excluded..

PROPOSED ORDER

It is proposed that the following unit is appropriate for the purpose of meeting and negotiating provided that an employee organization becomes the exclusive representative of the unit;

A unit consisting of all certificated employees including all full-time and part-time regular or contract certificated plus part-time certificated employees who have taught at least the equivalent of three semesters of the last six semesters inclusive and excluding all management, supervisory and confidential employees, substitutes and summer school instructors.

The parties have seven (7) calendar days from the receipt of this Proposed Decision in which to file exceptions in accordance with Section 33380 of the Board's Rules and Regulations. If no party files timely exceptions, this Proposed Decision will become final on November 14, 1977, and a Notice of Decision will issue from the Board.

Within ten (10) workdays after the employer posts the Notice of Decision, the employee organizations may 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 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 2, 1977.

Carol Ann Webster, Hearing Officer