

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



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| GLENDALE COMMUNITY COLLEGE DISTRICT, |) | |
| |) | |
| Employer, |) | |
| |) | |
| and |) | |
| |) | Case No. LA-R-748 |
| GLENDALE COLLEGE GUILD, LOCAL 2276, |) | |
| CFT/AFT, AFL-CIO, |) | PERB Decision No. 88 |
| |) | |
| Employee Organization, |) | |
| |) | January 30, 1979 |
| and |) | |
| |) | |
| GLENDALE COLLEGE EDUCATION ASSOCIATION, |) | |
| CTA/NEA, |) | |
| |) | |
| Employee Organization. |) | |
| |) | |

Appearances: Louis C. Awalt, Labor Relations Consultant (Donald D. Rea & Company) for Glendale Community College District; Charles R. Gustafson, Attorney for Glendale College Education Association, CTA/NEA; Anne Fragasso, Attorney for Glendale College Guild, Local 2276, CFT/AFT, AFL-CIO.

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

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or the Board) on exceptions to the attached hearing officer's proposed decision. The Glendale Community College District (hereafter District) takes exception to that portion of the proposed decision finding that 10 division chairpersons are not supervisors. The Glendale College Education Association, CTA/NEA (hereafter Association) takes exception to that portion of the proposed decision determining

that adult education teachers are not appropriately included in the unit. No exception was taken to the finding that the division chairperson of Allied Health is a supervisor.

The Board has considered the entire record in this case in light of the exceptions. We affirm the findings of fact and conclusions of law made by the hearing officer to the extent they are consistent with this decision.

We conclude that the 10 division chairpersons at issue are not supervisors within the meaning of the Educational Employment Relations Act (EERA).¹ We further conclude that adult education instructors are appropriately included in the negotiating unit.

On May 14, 1976, the Glendale College Guild, Local 2276, CFT/AFT, AFL-CIO (hereafter Guild) petitioned to be recognized as the exclusive representative for full-time certificated teachers who teach college credit courses including division chairpersons, part-time day or extension teachers who teach classes for college credit, counselors full- and part-time, nurses, librarians, and the enabler of the handicapped. The Guild also petitioned to represent the coordinator of the Learning Resource Center.

On June 7, 1976, the Association intervened seeking representation of a unit of all certificated employees excluding management, supervisory and confidential employees.

¹The EERA is set out at Government Code section 3540 et seq. Hereafter all statutory references are to the Government Code unless otherwise indicated.

The District indicated that it doubted the appropriateness of both of the petitioned-for units on June 11, 1976. Prior to the representation hearing the parties stipulated to the appropriateness of a unit which includes full- and part-time teachers who teach college credit courses.

FACTS

Division Chairpersons

Within the District there are 11 instructional divisions each headed by a chairperson. The status of 10 of these positions are presently at issue. The division chairpersons report to the dean of instruction who in turn reports to the college president.

Division chairpersons are selected by a vote of all full-time permanent and probationary instructors in the division. The names of all division full-time faculty are on the ballot unless they wish them stricken. If the selection of the division is rejected by the college president or the Board of Education, the faculty votes again. There is no evidence in the record that the president has ever rejected a division's selection.

Terms are for five years. After two years the division faculty votes on whether to retain the chairperson for the remaining term or compel a new election. No method of removal by the administration appears in the record.

A committee composed of the division chairperson, two division members chosen by the chairperson, and the dean of

instruction interviews candidates for full-time instructional positions. Two candidates are referred by the committee to the college president. The president then interviews the candidates and makes the final determination.

Candidates for part-time faculty positions are interviewed by a panel composed of the division chairperson and an administrative dean. A faculty member, chosen by the division chair, with expertise in the subject area may be invited to join the panel. The final selection is usually made by "consensus" of the panel. However, evening instructors are selected by the administration dean who "as a rule" accepts the recommendation of the faculty member with expertise and the division chairperson.

Division chairpersons recommend part-time classified personnel, including students, for hire, but no evidence was presented on the effectiveness of the recommendations. Nor does the record reveal the work performed by classified personnel or whether division chairpersons supervise classified employees in the performance of their work.

Once a year a committee composed of the division chairperson, the dean of instruction, and a regular instructor chosen by the person evaluated conducts an evaluation of full-time probationary instructors. Only the committee as a whole can file an unfavorable report with the dean of instruction. Once every two years the division chairperson and an instructor chosen by the person evaluated conduct an evaluation of regular permanent instructors. There is no

evidence these reviews have ever resulted in termination. Adult education instructors are not evaluated by division chairpersons.

The available evidence on discipline of faculty members is sparse. One division chairperson testified that he has had to administer discipline. However, the nature of the discipline, the occasion for it, and whether this was a unique or common instance were not revealed in the record. Another division chairperson testified that he has never administered discipline but has "discussed problems with the people in the division."

Class schedules are devised by division chairpersons from faculty requests for classrooms, courses, and hours. Conflicts between faculty desires are either worked out before the requests are submitted to the division chairperson, or resolved in consultation between the faculty involved and the division chairperson. Consultation has uniformly resulted in satisfaction of all parties; the record reveals no instance in which division chairpersons have claimed or exercised authority to make a work assignment unsatisfactory to the faculty member.

Course content is in the hands of the instructors, and approval of texts by division chairpersons, while required, is routinely granted.

The practice on absences of instructors varies; in at least one division the chairperson arranges for a substitute or cancels the class. In at least one other division the dean of instruction handles absences.

The dean of instruction, not division chairpersons, is shown as the first level of the grievance procedure in the faculty manual; however, the dean's uncontradicted testimony establishes that he routinely refers grievances to the division chairpersons. The dean of instruction also testified that division chairpersons have authority to resolve grievances. Nonetheless, there is no evidence that division chairpersons exercise authority to adjust grievances; one division chairperson testified "I try to counsel the individuals so that they can reach agreement among themselves." The only instance in the record of a grievance not resolved by mutual agreement of the parties was adjusted by the dean of instruction, not by a division chairperson.

Each division has a budget for supplies and equipment. Proposed division budgets are amalgamated by the chairpersons from department budgets and submitted to the dean of instruction for approval. The function of the division chairperson was described as to receive department requests and "prepare a list," or "tabulation for the division," or "I break it down into respective areas and total it all up and request rationales."

Division chairpersons are paid according to the instructors' salary schedule plus a small stipend which increases with the number of instructors in the division. In no case does the stipend exceed \$16.05 each month. Administrators are paid on a separate schedule.

There is no special credential required for the position of division chairperson; administrators are specially credentialed. Chairpersons do not have secretaries; administrators do.

Division chairpersons may and do serve on the Faculty Senate. In the past four years at least two division chairpersons have served on the Faculty Senate. One of these served as senate president for a year.

One division chairperson has no released time for chairperson duties, nine have between 20 and 45 percent released time. Typically, released time is not sufficient for completion of the chairperson functions.

One division chairperson testified that he considered himself a faculty member, not an administrator. Another division chairperson testified that he considered himself to be both a supervisor and an elected representative of the faculty.

DISCUSSION

This Board determines supervisory status by an examination of the facts of each case. Government Code section 3540.1(m) specifically abjures reliance on job titles and defines a supervisory employee as:

"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.

Accordingly, in prior cases the Board has found some personnel with the title of division chairperson to be supervisory,² and others not.³

In Los Rios the Board determined that division chairpersons held an allegiance to the administration not required of other faculty and exercised substantial independent control of supervisory functions. In those circumstances we concluded that division chairpersons were supervisory employees.

There are no indicia of this type of allegiance to the administration present in this case. The evidence is overwhelming that division chairpersons are democratically selected by and responsible to the faculty, not the administration. Democratic selection is fostered by the selection procedure which is designed to guarantee that every eligible faculty member will be considered for the post unless he or she removes him or herself from the running. Unlike Los Rios, the faculty here do not submit a list of acceptable candidates to the administration. Rather, one nominee is selected by his or her peers, and the record does not indicate that the selection has ever been rejected. Even more convincing, the faculty alone is empowered to remove division

²Los Rios Community College District (6/9/77) EERB Decision No. 18.

³Monterey Peninsula Community College District (10/16/76) PERB Decision NO. 76.

chairpersons prior to expiration of their five-year terms. These circumstances are strong evidence that division chairpersons owe their allegiance to their faculty members.

Nor is there persuasive evidence that division chairpersons enjoy special status and prerogatives. They are paid on the regular faculty schedule; the additional stipend they receive is relatively minor.⁴ Unlike administrators, they are not specially credentialed.

Again unlike Los Rios, division chairpersons are permitted to and do serve alongside other faculty members on the Faculty Senate. Indeed, one chairperson simultaneously was president of the senate and chairperson. Given the circumstances of their selection, duties, and associations it is not surprising that division chairpersons testified that they view themselves as representatives of the faculty.

Effective independent exercise of any one of the functions set out in EERB section 3540.1(m) suffices to establish supervisory status.⁵ But it has long been the practice to disperse authority among faculty members pursuant to the academic principle of collegiality. Accordingly, the Board examines community college cases in the light of the tradition of collegially shared authority.⁶

⁴Compare with Los Rios, supra, EERB Decision No. 18, at p. 13 (Annual stipend between \$1,957 and \$2,260.)

⁵Sweetwater Union High School District (11/23/76) EERB Decision No. 4.

⁶Los Rios Community College District (6/9/77) EERB Decision No. 18.

At Glendale Community College, the participation of division chairpersons in hiring and evaluation of faculty is largely confined to service on committees which include at least one and frequently two other faculty members. Traditional practices of collegially shared authority, thus, have significantly dispersed hiring and evaluating authority. In those instances in which division chairpersons individually recommend candidates for part-time positions, there is no evidence that their recommendations are accorded any more weight than regular faculty.

The involvement of division chairpersons in hiring of classified personnel does not demonstrate that they are supervisors. Their recommendations were not shown to be effective. Moreover, classified personnel, including students, are not included in the certificated negotiating unit. In Washington Unified School District (6/27/78) PERB Decision No. 56, we declined to exclude certain classified personnel from a classified negotiating unit on the basis of their sporadic exercise of supervisory authority, hiring and firing, over non-unit personnel. We held that the sporadic exercise of supervisory authority over non-unit personnel had not so allied the employees with management that a generalized conflict of interest was created. Similarly, in this case, the authority of division chairpersons over non-unit classified employees is not sufficient to exclude them from a certificated negotiating unit.

The involvement of division chairpersons in preparation of class schedules, budget preparation and administration, course content, and selection of texts is routine at best. Only one chairperson testified that he became involved in faculty absences and that was only to obtain substitutes; the record revealed no discipline imposed by chairpersons for absences.

The role of chairpersons both in handling grievances and handling problems with faculty performance is confined to counseling and mediating; they have not adjusted grievances, nor have they imposed discipline.

In sum, as division chairpersons possess no effective authority in any of the statutorily described supervisory functions, they cannot be excluded from the unit on the ground that they are supervisors.

FACTS

Adult Education

There are 120 adult education teachers in the District teaching 275 classes at 50 locations not on the main District campus. Both the adult education and evening programs are heavily taught at the same high schools. Of the adult education teachers, about 40 percent have taught over four years. The adult education program is funded by ADA funds, as are other programs.

Preparing course outlines, conducting classes, and giving and grading exams are all duties of adult education teachers as well as of regular and evening instructors.

As reflected in the 1977-1982 Five-Year Plan of the California Community Colleges Board of Governors, the mission of community colleges has become to provide life long education, not only college credit. Only 20 of the 120 adult education instructors teach courses which give credit toward high school and college degrees. The same age group attends all District courses; pupils range in age from 18 to 65 plus years in both credit and non-credit adult education courses. The same class may have students taking it for credit and not for credit.

Adult education teachers hold the same credentials as instructors in other programs, have the same contract as other part-time employees, work during the same hours and in the same facilities as other instructors included in the unit, and, like evening instructors, may have their classes cancelled if enrollment falls below a predetermined level.

Adult education instructors average six hours teaching a week. They are not eligible for the Faculty Senate and, typically, do not hold tenure.

The record reveals only one adult education instructor who has an office. That instructor is, however, not typical of adult education instructors in that she serves as a coordinator of the District's CETA program. There is no evidence on whether other full- or part-time instructors have offices.

Adult education teachers do not report to the division chairpersons; they are responsible to the director of adult education and/or the coordinator of parent education who are in

turn responsible to the dean of continuing education. The director of adult education is "involved" in the selection and evaluation of staff. At most their evaluation procedure is informal and consists of discussions with their coordinator.

Adult education instructors are paid on the same salary schedule as other part-time instructors; the schedule provides for pay according to three classes of educational attainment and three steps of longevity. However, adult education instructors teaching non-credit courses are limited to pay for the lowest class of educational attainment. And, unlike all other instructors, adult education teachers receive no fringe benefits.

DISCUSSION

As no evidence has been presented concerning established practices of employees or the effect of the size of the unit on the efficient operation of the District, we determine the appropriateness of the unit solely by resolving the question of community of interest. We find that adult education instructors share a sufficient community of interest with other full- and part-time members of the unit to require their inclusion in the negotiating unit.⁷

⁷This result is consistent with the presumption recently articulated by the Board that all classroom teachers shall be included in a single negotiating unit unless inclusion of some class of teachers is shown to be inappropriate because of a lack of community of interest, established employee practice, or the effect of the size of the unit on the efficient operation of the district. See Peralta Community College District (11/7/78) PERB Decision No. 77, Hartnell Community College District (1/2/79) PERB Decision No. 81.

In a trio of early cases the Board excluded adult-education teachers from units of certificated employees in elementary and high school districts.⁸ Those cases uniformly found that adult education instructors did not share a community of interest with instructors in the regular educational program of their districts. Those results were not surprising. In each of those cases the adult-education program was completely separate from and ancillary to the regular educational program. Elementary and high school districts are preoccupied with the comprehensive education of young students in the K-12 program attending on a full-time basis. Put simply, teachers in such regular programs deal with children and adolescents in pursuit of diplomas, while adult education teachers instruct adults seeking to expand their knowledge and skills in particular areas. The burdens, concerns, and interests of teachers instructing children and adolescents are likely to be far removed from those of teachers instructing adults. In the community college setting, as reflected in this case, the discontinuity between the regular educational program and the adult education program is not so abrupt. As affirmed by the Five-Year-Plan of the California Community Colleges, the mission of the community colleges increasingly is to foster life-long learning, not to provide degrees.

⁸Petaluma City Elementary and High School Districts
(2/22/77) EERB Decision No. 9, Lompoc Unified School District
(3/12/77) EERB Decision No. 13, New Haven Unified School
District (3/22/77) EERB Decision No. 14.

The record reveals no distinction between the conditions in credit and non-credit classes let alone a distinction which would negate a community of interest among classroom teachers. Credit and non-credit classes were neither distinguished by their content nor by the age, educational attainment, or special needs or capacities of their students. Examinations and grades are given in all classes, credit or non-credit. Credit and non-credit classes are given in the same facilities and during the same hours of the day. Indeed, the same class may have students taking it for credit and not for credit; about 17 percent of all adult education instructors teach classes for credit.

While adult education teachers are limited to the lowest class of educational attainment on the part-time pay scale, the difference in hourly pay for Class I and Class III is at most \$1.11. While fringe benefits are not available to adult education instructors, the extent and nature of fringe benefits available to other instructors was not revealed in the record. These scant differences are particularly negligible as they arose prior to implementation of the right to meet and negotiate, and the matters in question are now, presumably, negotiable.⁹

⁹Gov. Code sec. 3543.2 provides, in pertinent part:

The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment.

Although adult education instructors average six hours teaching weekly, are not eligible for the Faculty Senate, and do not, typically, hold tenure, there is no evidence in the record that other part-time instructors, who are conceded to share a community of interest sufficient for inclusion in the certificated unit, have different conditions.

Moreover, the certification qualifications of adult and other instructors are indistinguishable; the number of hours they work, their schedule of hours, and their work locations are substantially the same as those of other part-time employees included in the unit. These crucial circumstances could not be more different from the circumstances attendant in those prior cases in which the Board excluded adult-education teachers from units of certificated employees in elementary and high school districts.¹⁰

The sole remaining characteristic of adult education teachers which is alleged to distinguish them is that they are subject to a different line of supervisory authority. The director of adult education, who is responsible to the dean of continuing education, is "involved" in their hire and informally evaluates them. Other faculty members fall under the authority of the dean of instruction. While separate

¹⁰Petaluma, supra, (no grades given except where credit was given; class content differed from regular program; qualifications differed); Lompoc, supra, (adult education and regular program qualifications, hours, load, and curriculum differed); New Haven, supra, (adult education and regular program qualifications, schedules, benefits, and contract differed).

supervision of employees might support a finding that a separate unit was appropriate,¹¹ it does not by itself establish that such units are alone appropriate or that the comprehensive unit is inappropriate.¹² Moreover, the evidence on separate lines of supervisory authority is insubstantial in this case. As already discussed, division chairpersons do not have supervisory functions; and the participation of the director of adult education in hiring and evaluation was not shown to be effective. Nor is there any evidence that the dean of continuing education exercises supervisory authority over adult education teachers.

In these circumstances, to exclude adult education instructors would be to pay homage to minor distinctions which in reality do not disturb the community of interest required for a unit to negotiate successfully. Accordingly, the Board finds a comprehensive unit of certificated employees including adult education instructors to be appropriate for meeting and negotiating.

¹¹See Denver Publishing Co. (1978) 238 NLRB No. 33 [99 LRRM 1222, 1223], Florida Steel Corp. (1976) 222 NLRB 546, 547 [91 LRRM 1189, 1190].

¹²See Archdiocese of Philadelphia (1977) 227 NLRB 1178, 1180-81 [94 LRRM 1719, 1722 (archdiocesewide unit of lay teachers encompassing 273 schools is appropriate though each parish hires, fires and disciplines independently where there is no petition for a separate unit)].

ORDER

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

1. Division chairpersons other than the chairperson of Allied Health are not supervisory positions within the meaning of Government Code section 3540.1(m) and are included in the unit.

2. Adult education instructors are appropriately 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.

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

(By: Jerilou Cossack Twohey, Member Harry Gluck, Chairperson

Raymond J. Gonzales, Member, dissenting in part:

As with all supervisory cases, Government Code section 3540.1(m)

is the yardstick for ultimate supervisory findings.¹ In applying the language contained therein to one of the earliest cases before this Board, it was held that the possession of any one of the enumerated functions listed in section 3540.1(m) or the effective power to recommend such action, if requiring independent judgment, would be sufficient to make one a supervisor.² The Board has adhered consistently to that standard.³ Additionally, the Board, in Sweetwater, wisely acknowledged (1) the unique statutory scheme of the Educational Employment Relations Act (hereinafter EERA or Act) in contrast to the Labor Management Relations Act, as amended, 29 U.S.C. Section 151 et seq., and (2) the fact that public and private sector supervisors so differ in the nature of the authority they possess to the effect that "decisions regarding hiring, firing, discipline and salaries of employees in the public sector are generally ultimately reserved for decision-makers far removed from the employees' immediate supervision."⁴ Consequently, the Board concluded that despite the obvious similarity of both the EERA and the LMRA, a broader construction of the definition of supervisor contained in the EERA is not only permissible, but necessary.

¹Section 3540.1(m) is set forth in full in the majority opinion, ante, pp. 7-8.

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

³Marin Community College District (8/10/78) PERB Decision No. 64; Los Rios Community College District (6/8/77) EERB Decision No. 18; Oakland Unified School District (3/28/77) EERB Decision No. 15; San Diego Unified School District (2/8/77) EERB Decision no. 8.

⁴Campbell Union High School District (8/17/78) PERB Decision No. 66; Sweetwater Union High School District (11/23/76) PERB Decision No. 4 at 13.

Bearing this in mind, I cannot agree with my colleagues that division chairpersons are non-supervisory employees. The record contains ample evidence to support and compel a supervisory determination.

Here the evidence is clear that the division chairpersons exercise independent judgment in adjusting grievances, assigning work, and performing a variety of other functions that clearly distinguish them from other certificated instructional personnel.

Grievance Adjustment

Much of the testimony in this case focused on the area of grievance adjustment. Regarding this function alone, it is absolutely clear that division chairpersons possess the authority to resolve grievances. The majority clearly acknowledges this, noting that grievances are addressed initially by division chairpersons, and that there is uncontradicted evidence that the Dean of Instruction routinely refers grievances to the division chairpersons. However, they dismiss the significance of this function as it applies to this case by saying that there is "no evidence that division chairpersons exercise authority to adjust grievances."⁵ The majority apparently creates a new test for determining whether or not one occupies a supervisory position by drawing a distinction between the authority to exercise a particular function and the actual exercise of such authority. I take issue with the majority's approach for two reasons. First,

⁵Supra at 6.

my colleagues have apparently ignored the plain language of section 3540.1(m) which makes the authority to exercise a certain responsibility the critical element for determining supervisory status:

"Supervisory employee" means any employee . . . having authority . . . to adjust grievances . . . if in connection with the foregoing . . . the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Second, my colleagues, who have been so prone to rely upon NLRB precedent as an aid in interpreting the EERA, particularly in view of Fire Fighters Union v. City of Vallejo,⁶ fail to acknowledge the case law emanating from that jurisdiction to the effect that it is the power, as distinguished from the exercise of such power, that determines whether or not an employee is a supervisor.⁷ So long as the existence of the power is real rather than theoretical, the frequency of its exercise is irrelevant.⁸

⁶(1974) 12 Cal.3d 608, 87 LRRM 2453. In this case, the California Supreme Court held that it is appropriate to use National Labor Relations Act precedents as a guide in interpreting analogous or identical language in state labor legislation.

⁷NLRB v. Harmon Industries, Inc. (8th Cir. 1977) 564 F.2d 1047; Ohio Power Co. v. NLRB., (6th Cir. 1949) 176 F.2d 385, cert. denied (1949) 338 U.S. 899.

⁸NLRB v. Pilot Freight Carriers, Inc. (4th Cir. 1977) 558 F.2d 205, cert. denied (1977) 434 U.S. 101. The infrequent exercise of a supervisory function is to be distinguished from situations where an individual may be substituting for the actual supervisor who, in turn, may be absent due to vacation or illness. In such situations, the sporadic exercise of a supervisory function does not make that individual a supervisor since it is not a normal part of his or her duties. See NLRB v. Quincy Steel Casting Co. (1st Cir. 1952) 200 F.2d 293, 296; Fred Rogers Co. (1976) 226 NLRB No. 175; Muscle Shoals Rubber Co. (1966) 157 NLRB No. 82.

Not only does the majority create a new test for determining supervisory status, they dismiss the obvious exercise of that authority by the division chairpersons here because the division chairpersons assume somewhat of a mediator role in resolving problems among staff. In my view, this approach is a far more desirable personnel practice than to simply and autocratically make determinations regarding a particular dispute or problem. Further, to successfully resolve problems through such an approach is truly an artful exercise of independent judgment.

Finally, significant testimony was elicited as to the organizational structure of the District which bears upon the issue of grievance adjustment. Two organizational charts were introduced into the record, one by the Glendale Community College District (District) and the other by the Glendale College Education Association (Association). The charts differed in certain respects. The Association's exhibit did not show an organizational line from faculty to division chairpersons, but did show a line from faculty to the Dean of Instruction, Dr. Ivan L. Jones. The District's exhibit did show a line from the faculty to the division chairpersons, but did not show a line from the faculty to the Dean of Instruction, Dr. Jones.

I am convinced that the District's exhibit is the most recent and accurate reflection of how this particular community college is organized.⁹ As such, a line drawn from faculty to the division

⁹The testimony of Dr. Jones, even on cross-examination, confirmed that the District's exhibit was the most recent chart because certain directors are designated as "Dr." on the District's

chairpersons represents a line of supervision which is consistent with the most efficient way that the District can handle faculty problems generally. Otherwise, as a matter of logic, it would be most difficult and impractical for there to be direct supervision on grievances between the Dean of Instruction and faculty since there are approximately 150 day faculty members and since the Dean is responsible for the supervision of a number of administrators who are directors or deans in charge of designated units. The logistics of having the division chairpersons deal with grievances firsthand is clear from the record:

Q. I'm going back to CTA Exhibit 1, if you would, Dr. Jones. On that document there's a line from the faculty box which runs over to the line which goes directly up to your name. If the faculty had any of those personal, professional problems or ideas or recommendations that, things of that nature, at the time CTA Exhibit 1 was adopted, did the faculty follow this organizational line and bring those matters directly to your attention?

A. No, in fact that, I assume that's why the chart has changed. As, as you heard testified in the, the opening remarks, in the total faculty we have, I believe 400 and some instructors. Those teaching in the day would probably certainly total 150 or so, it would be almost impossible for them to report directly to me and, and certainly get anything from me. They, they do go through the chairmen, sir, that, that's the idea.

exhibit, while the same individuals are addressed as "Mr." and "Mrs." on the Association's exhibit. Dr. Jones testified that these particular individuals had received their doctorates approximately two weeks before the hearing in this case. Further, in response, essentially to whether or not the lines in the District's exhibit were true reflections of the lines of supervision between the faculty and division chairperson and the faculty and the Dean of Instruction, Dr. Jones indicated that the chart had been changed to reflect the fact that matters normally are brought first to the division chairpersons rather than to him.

Q. That's it, it always has been even before District Exhibit 1 was drafted, the faculty, whenever they felt they needed representation with the administration, went directly to their division chairpersons rather than directly to you or any other member of the administration, is that correct?

A. The, that would be the procedure. I, I can't be on a witness stand and say that a faculty member hasn't come directly to me because this does happen, but the procedure and the general operating procedure is that they go through the chairpersons and they do.

Class Scheduling

Division chairpersons are also responsible for structuring and recommending the class schedule which, in effect, determines the courses, classrooms, and hours that the instructors will be assigned. While certain relevant factors such as availability of classrooms or monetary constraints do bear upon the degree to which a division chairperson exercises independent judgment in this regard, and while an effort is made to accommodate the instructors' desires, it is clear from the record that where a conflict arises and alternatives exist, the division chairperson has the authority and has exercised that authority to make a decision even if contrary to the desires of affected instructors.¹⁰

¹⁰The following testimony was elicited from a division chairperson:

Q. And what process is used then for preparing the initial class schedule?

A. Well, prior to developing the initial one, I ask the instructors what courses and hours they would prefer for the coming semester and they submit these to me and then, using that as a basis, I develop the initial class schedule.

Q. Do you ever make decisions in regard to the class schedule

No evidence was introduced to suggest that the division chairperson's recommendations to the Dean of Instruction regarding class scheduling is ineffectual. Rather the testimony as a whole, suggests a basic reliance by the administration on the division chairperson's scheduling of classes and assignment of courses, which are responsibilities that most directly and vitally determine the working conditions of the teaching staff.

Finally, the record establishes numerous other responsibilities of the division chairpersons, some of which are secondary indicia of supervisory status, which immediately set them apart from their teaching colleagues. Some of these responsibilities are: preparation and administration of division budget, preparation of course outlines, approval of conference attendance, approval of supplies, approval of field trips, and recommendation of textbooks.

On the basis of the foregoing, I believe the division chairpersons are supervisors within the meaning of section 3540.1(m).

Regarding the majority's disposition of the adult education instructors, I concur in such decision only because it would be inconsistent for me to exclude them since the parties have stipulated to the inclusion of part-time instructors in the unit, the latter having working conditions substantially similar to those of the

and the assignments which are contrary to the input you received from the other members of the division?

A. Yes. I always consult with the individuals involved before completing a recommendation, however.

adult education instructors. But for the stipulation, which is not contrary to the EERA, but in fact, consistent with established Board policy,¹¹ I would not include part-time instructors with full-time instructors in a negotiating unit¹² but likely find a separate unit of adult education instructors together with part-time instructors appropriate.

Raymond/J. Gonzales, Member /

¹¹Centinela Valley Union High School District (8/7/78) PERB Decision No. 62.

¹²Rio Hondo Community College District (1/25/79) PERB Decision No. 87, dissenting opinion; Hartnell Community College District (1/2/79) PERB Decision No. 81, dissenting opinion; Los Rios Community College District (6/9/77) PERB Decision No. 18, dissenting opinion.

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

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| GLENDALE COMMUNITY COLLEGE DISTRICT, |) | |
| |) | |
| Employer, |) | |
| |) | |
| and |) | |
| |) | Case No. LA-R-748 |
| GLENDALE COLLEGE GUILD, LOCAL 2276, |) | |
| CFT/AFT, AFL-CIO, |) | PROPOSED DECISION |
| |) | |
| Employee Organization, |) | December 8, 1977 |
| |) | |
| and |) | |
| GLENDALE COLLEGE EDUCATION ASSOCIATION, |) | |
| CTA/NEA |) | |
| Employee Organization. |) | |

Appearances: Louis C. Awalt, Labor Relations Consultant (Donald D. Rea & Company) for Glendale Community College District; Charles R. Gustafson, Attorney for Glendale College Education Association, CTA/NEA; Anne Fragasso, Attorney for Glendale College Guild, Local 2276, CFT/AFT, AFL-CIO.

Decided by: Carol Ann Webster, Hearing Officer

PROCEDURAL HISTORY

On May 14, 1976, the Glendale College Guild (AFT) petitioned for recognition as exclusive representative for all full-time certificated employees involved in teaching credit courses, including librarians, counselors, division chairpersons, part-time day or extension teachers who also teach classes for college credit, the enabler of the handicapped and the coordinator of the Learning Resource Center.

June 7, 1976, the Glendale College Education Association (CTA) filed an intervention to represent all certificated employees excluding management, supervisory and confidential employees.

On June 11, 1976, the Glendale Community College District (District) notified the Educational Employment Relations Board (Board or EERB) that it doubted the appropriateness of both proposed units. Subsequently the parties agreed on an appropriate unit¹ with the exception of two classifications, those of division chairperson and adult education teacher.

CTA urges that both classifications be included in the unit. AFT urges that adult education teachers be excluded and the District urges that division chairpersons be excluded from the unit.

ISSUES

1. Are division chairpersons appropriate to the unit?
2. Are adult education instructors appropriate to the unit?

FINDINGS OF FACT

Glendale Community College District has an enrollment of 14,339 and is located in Los Angeles County.

Division Chairpersons

Division chairpersons teach on the average of 60 percent of their time. They are elected by their peers within the division and serve for a period of five years after which they must either step down or run for re-election. There is also a provision for review by the staff after serving two years of the term.

¹The parties stipulated to a unit of all certificated employees including the director of athletics, and excluding all supervisory, management and confidential personnel including the coordinator of the Learning Resource and the enabler of the handicapped.

Division chairpersons are paid on the same scale as other teachers with an additional stipend for duties as chairperson. Division chairpersons are not required to have an administrative credential as required of administrative personnel.

Division chairpersons are not part of the formal grievance procedure. In fact, many of the division chairperson's responsibilities are clerical in nature, or are of the sort which do not require the use of independent judgment, such as the preparation of semester schedules based upon information submitted by the staff members. Another example of this type of responsibility is the budgetary duties which commence with staff member requests and are limited by available monies.

The chairperson participates in a committee hiring procedure along with other members of the staff. He or she does not have authority to dismiss members of the faculty.

Ruth E. Davidson - Division Chairperson for Allied Health

During the hearing, testimony was taken from Ruth E. Davidson regarding her role as division chairperson for Allied Health. Ms. Davidson's position warrants 100 percent release time from teaching, although periodically she does teach one two-hour course to relieve the heavy workload on other teaching nurses in the District. Her position is statutory, authorized by the Nursing Practice Act.

Unlike other division chairpersons who are elected by their peers, the chairperson for Allied Health is selected by the administration and approved by the Board of Nurse Examiners, a

state agency. That Board also sets guidelines for course content.

Ms. Davidson testified that she believes that she has authority to adjust grievances. While admitting that she tries "persuasion" because she does not want to give a direct order, she stated that she does have authority to do so when necessary. Furthermore, she has successfully recommended the termination of one of the nurses and she has authority to select classified personnel without the involvement of a committee to rule on the selection.

The division chairperson for Allied Health has her own department clerk to perform clerical functions, unlike other division chairpersons who must make their own arrangements for such clerical work.

Adult Education Teachers

Adult education teachers report to the coordinator of parent education or the director of adult education, who in turn reports to the administrative dean of continuing education. Other faculty members report to division chairpersons.

It is possible for adult education teachers to achieve tenure as adult education teachers, but not as regular teachers. While there is some tie to the salaries of the regular instructors, i.e., adult instructors receive the same percentage increase as regular instructors, adult education teachers cannot pass the class one pay group. Division chairpersons are not involved in the evaluation of adult

education teachers whereas they are so involved with regular teachers.

Educational requirements are somewhat less for adult education instructors in the academic specialties, although in reality, some of the adult education teachers possess the same credentials as the regular teachers.

Evidence was also presented showing that teacher hiring procedures varied between the regular day and adult education schools.

The evidence indicates that most of the adult education classes are offered in locations other than the campus thereby reducing the opportunity for interaction between the adult and the regular faculty. Furthermore, adult education teachers are not permitted to join the Academic Senate. Although there are exceptions, the evidence indicates that adult education teachers do not have their own offices provided by the District as do most regular instructors.

A majority of the adult education teachers do not teach courses for college credit.

The District brief pointed out that continuing service on the part of a large percentage of adult education instructors gives evidence of a continuing interest in the District.

CONCLUSIONS OF LAW

Division Chairpersons

The Educational Employment Relations Act, Section 3540.1(m)

defines "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.

The Board, in Sweetwater Union High School,² held that in order to find supervisory status, only one of the enumerated duties and responsibilities must be found to exist.

In Los Rios Community College District,³ the Board found that division chairpersons were supervisory employees. In that case, however, they spent "between 60 and 90 percent of their time" performing administrative duties, and were in direct line of supervision with the administration. Furthermore, there, the chairpersons were appointed by the administration and were not permitted to belong to faculty senates. In addition, in Los Rios the chairpersons were a formal part of the grievance procedure.

A review of the facts does not produce convincing evidence that the division chairpersons possess any of the above authorities. As mentioned in the findings of fact, all of the chairpersons' activities appear to be of a routine nature and

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

³EERB Decision No. 18, June 9, 1977.

do not allow for significant use of independent judgment. This, coupled with the fact that they are elected by their peers and may be removed by their peers and see themselves as representatives of the faculty, is strong evidence that they are not in direct line of authority with the administration.

While there is evidence that the chairpersons are involved in the selection of new hires, the procedure followed is to have the chairperson sit on a hiring committee along with other members of the staff and there is no convincing indication that the chairpersons have any weight additional to that of other members of the selection committee.

We therefore find that the division chairpersons are not supervisory employees within the meaning of the Act.

Division Chairperson for Allied Health

The facts indicate that this position is unrepresentative of division chairpersons and suggest that this division chairperson is a supervisory employee. The evidence indicates that she has authority to hire classified personnel and the ability to successfully recommend termination of certificated personnel.

As mentioned supra, the Board in Sweetwater Union High School District, found that Section 3540.1(m) was written in the disjunctive and therefore if a position possesses any of the enumerated responsibilities signifying supervisory capacity, it shall be designated as supervisory and excluded from the unit. Since the above indicia of supervisory status were not convincingly rebutted this position should be excluded from the unit.

Adult Education

In Belmont Elementary School District,⁴ the Board held that in order to determine who may be included in a unit of all classroom teachers it must first be decided who is a classroom teacher. Since "only...regular full-time probationary and permanent teachers employed by a district" are classroom teachers, adult education teachers are subjected to scrutiny on a case-by-case basis under the provisions of Government Code Section 3545. Such employees will be admitted to the unit only when it can be shown that there are both a sufficient community of interest and established practices, and that including them in the unit will not hinder the efficiency of operation of the district.

The Board considered the question of whether or not adult education teachers had a community of interest with regular teachers sufficient to include them in the unit of regular teachers in three important cases: Petaluma City Elementary and High School Districts,⁵ Lompoc Unified School District,⁶ and New Haven Unified School District.⁷

In Petaluma City Elementary and High School Districts, the Board found that adult education teachers could not be included in a unit with other classroom teachers, in part because there

⁴EERB Decision No. 7, December 30, 1976.

⁵EERB Decision No. 9, February 22, 1977.

⁶EERB Decision No. 13, March 17, 1977.

⁷EERB Decision No. 14, March 22, 1977.

was not sufficient evidence to allow reliance upon established practices, and in part because there was not a community of interest. There were substantial differences between adult school teachers and regular certificated employees: educational requirements differed, recruitment processes differed, course matter and cost guidelines varied and supervision differed. Job security was more tenuous and tenure lines varied.

In Lompoc Unified School District, the Board again found both that there was no record of established practices and that there was no community of interest between the adult education teachers and the classroom teachers. Qualifications, job security, teaching load and tenure were all different. Moreover, the Board noted that there are separate Education Code sections to cover adult education programs.

In New Haven Unified School District, the Board noted that hours, educational qualifications and school year differed for adult education teachers. They were classified as substitutes, with different job security and tenure requirements.

In each of these cases, the Board held that adult education teachers did not have a sufficient community of interest with regular teachers, even though the facts varied considerably among the cases. With such a strong precedent for exclusion from the unit, those seeking to include adult education teachers in a unit of all regular teachers must carry the burden of showing why the facts in a particular case warrant a departure from the rule.

In the present case, while there was evidence indicating that many of the adult education teachers did have qualifications similar to those of their regular counterparts, and while there was considerable stability in the adult school staff indicating continuing interest in the District, these facts were insufficient to rebut the presumption raised by Board precedent. As in all three of the above cases, adult education teachers here were subject to different tenure requirements. Their educational requirements are different than those for regular faculty. Their hiring procedures vary. They teach at different sites.

CTA, in its brief, urges that rather than use the Board cases cited above, we should use the criteria established in Kalamazoo Paper Box, Inc., 136 NLRB 134, 137; 49 LRRM 1715 (1962) cited by the concurring and dissenting opinion in Sweetwater Union High School District.⁸ When considering the question of community of interest, the National Labor Relations Board held that:

Factors which warranted consideration in determining the existence of substantial differences in interests and working conditions included: a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications; training and skills; differences in job functions and amount of working time spent away from the employment or plant sites under State and Federal regulations; the infrequency or lack

⁸EERB Decision No. 4, November 23, 1976.

of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

It appears that this indeed may be a reasonable guideline; the Kalamazoo Paper Box criteria have been cited with approval, and the EERB will examine NLRB precedent to the extent applicable.⁹ However, here, as indicated above, the weight of the evidence establishes a lack of the community of interest urged by CTA.

For these reasons, it is the proposed decision that adult education instructors are inappropriate to the unit and should be excluded.

PROPOSED ORDER

It is the Proposed Decision that:

1. The position of division chairperson is not supervisory with the meaning of Section 3540.1(m) of the EERA, with the exception of the division chairperson for Allied Health which is supervisory and shall therefore be excluded from the unit.
2. Adult education teachers do not have sufficient community of interest with regular teachers and therefore shall be excluded from the unit.
3. All other certificated employees shall be included in the unit according to the stipulations of the parties.

The parties have seven (7) calendar days from receipt of this Proposed Decision in which to file exceptions in

⁹Firefighters Union v. City of Vallejo, 12 C3d 608 (1964).

accordance with California Administrative Code, Title 8, Section 33380. If no party files timely exceptions, this Proposed Decision will become a final order on December 21, 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 shall demonstrate to the Regional Director at least 30 percent support in the units herein determined or earlier agreed upon. 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 in a unit or (2) only one employee organization qualifies for the ballot in a unit and the employer does not grant voluntary recognition* to that employee organization.

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 8, 1977

Carol Ann Webster
Hearing Officer

*Voluntary recognition can only be granted to an employee organization which demonstrates a majority showing of interest in the appropriate unit. See Gov. Code Sec. 3544 and 3544.1.