

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



COMPTON UNIFIED SCHOOL DISTRICT,

Employer,

and

CALIFORNIA TEAMSTERS, PUBLIC,  
PROFESSIONAL, AND MEDICAL EMPLOYEES UNION,  
LOCAL 911, AFFILIATED WITH THE  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS  
OF AMERICA,

Employee Organization,

and

LOS ANGELES COUNTY BUILDING AND TRADES  
COUNCIL, COMPTON BUILDING TRADES  
ASSOCIATION,

Employee Organization,  
APPELLANT,

and

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION and  
its Compton Chapter No. 30,

Employee Organization,

and

LOS ANGELES CITY AND COUNTY SCHOOL  
EMPLOYEES UNION, LOCAL 99, SEIU,

Employee Organization.

Case Nos. LA-R-310  
LA-R-311  
LA-R-350  
LA-R-718

PERB Decision No. 109

October 26, 1979

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Appearances: Edna E. J. Francis, Attorney (Paterson & Taggart)  
for Compton Unified School District; Robert D. Vogel, Attorney  
(Brundage, Beeson & Pappy) for California Teamsters, Public,  
Professional, and Medical Employees Union, Local 911;

Donald L. Goodman and Rose Dick for California School Employees Association, Compton Chapter No. 30; William J. Smith, Attorney (Brundage, Beeson & Pappy) for Los Angeles County Building and Trades Council, Compton Building Trades Council; Robert Anderson, Los Angeles City and County School Employees Union, Local 99, AFL-CIO.

Before Gluck, Chairperson; Moore and Gonzales, Members.

#### DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) itself on exceptions filed by the Compton Building Trades Association (hereafter CBTA) to the attached hearing officer's proposed decision establishing a unit of operations-support services employees including skilled crafts employees. The hearing officer's statement of the procedural history and facts relevant to this appeal are substantially correct,<sup>1</sup> and are adopted as the findings of the Board itself. For the reasons that follow, we affirm the hearing officer's decision in this case, and adopt the proposed order as the order of the Board itself.

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<sup>1</sup>We note that the California Teamsters, Public, Professional and Medical Employees Union, Local 911 (hereafter Teamsters) filed its requests for separate units of drivers and security officers on April 2, 1976, and that CBTA filed its request for a skilled crafts unit on April 6, 1976, and not on April 1, 1976, as the hearing officer stated.

## DISCUSSION

### I. The Sweetwater Units

The Educational Employment Relations Act (hereafter EERA or Act)<sup>2</sup> is designed:

. . . 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 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.]

To this end, an employee organization may request a public school employer to recognize it, "alleging that a majority of the employees in an appropriate unit wish to be represented by such organization." (Gov. Code sec. 3544(a), emphasis added.)

An employer may refuse to grant recognition when it "doubts the appropriateness of a unit." (Sec. 3544.1(a).) In those cases, either the employer or the employee organization may petition PERB to determine "the appropriateness of a unit." (Sec. 3544.5(a).) (See also section 3541.3(a).) Standards for determining appropriate units are set by section 3545(a):

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<sup>2</sup>The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All section references herein are to the Government Code unless otherwise noted.

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 operations of the school district.

In Sweetwater Union High School (11/23/76), EERB Decision No. 4 at 18, the Board established three classified units which have come to be known as "presumptively appropriate units."<sup>3</sup> These units are (1) instructional aides (paraprofessionals), (2) office-technical and business services, and (3) operations-support services.

The operations-support services unit typically includes rank and file transportation, custodial, grounds, maintenance, food service and warehouse employees.<sup>4</sup> In three cases the Board has specifically included skilled craft employees in the

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<sup>3</sup>See e.g., Santa Clara County Superintendent of Schools (7/19/78) PERB Decision No. 59 at 6; Antioch Unified School District (11/7/77) EERB Decision No. 37 at 12 (concurring opinion); Greenfield Union School District (10/25/77) EERB Decision No. 315 at 2 (concurring opinion); Sacramento City Unified School District (9/20/77) EERB Decision No. 30 at 4; Foothill-DeAnza Community College District (3/1/77) EERB Decision No. 10 at 2.

<sup>4</sup>See Sweetwater, supra, EERB Decision No. 4 at 18. See also, e.g., Fremont Unified School District (12/16/76) EERB Decision No. 6 at 13-14; Sacramento City Unified School District (9/20/77) EERB Decision No. 30 at 13.

operations-support unit.<sup>5</sup> In a fourth case, the Board established a separate skilled crafts unit, holding that:

The [Sweetwater] presumption is rebuttable. Further, a party may show that a unit which deviates from a presumptively appropriate unit is also appropriate. In this case, . . . a unit of 'skilled crafts and maintenance' employees is appropriate on the basis of a separate community of interest. [Foothill-DeAnza Community College District (3/1/77) EERB Decision No. 10 at 2. But see Antioch Unified School District (11/7/77) at 12 (concurring opinion).]

## II. The Significance of the Sweetwater Presumption

By creating three "presumptively appropriate units" for the classified service, the Board determined that a strong community of interest generally exists among employees in each of these groups. The Board further determined that those units "reflect a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units." (Antioch Unified School District, supra, EERB Decision No. 37 at 7.)

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<sup>5</sup>San Mateo Union High School District (3/22/78) PERB Decision No. 49; Sacramento City Unified School District (9/20/77) EERB Decision No. 30; Fremont Unified School District (12/16/76) EERB Decision No. 6.

Having made these determinations, the Board presumes that when an employee organization seeks a Sweetwater unit the unit determination criteria set forth in section 3545(a) are met. The presumption thus acts as a catalyst to put as many units in place as early as possible.

The Sweetwater decision did not establish the "only appropriate units," nor even the "most appropriate units." Different units have in fact been found appropriate.<sup>6</sup> The Board has diligently preserved its option to create other units that vary from the Sweetwater configuration,<sup>7</sup> and has stressed that the Sweetwater presumptions are rebuttable.

### III. Establishing Variant Units

It is fair to say that the Board prefers Sweetwater units, and that all other things being equal will award a Sweetwater

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<sup>6</sup>E.g., Foothill-DeAnza Community College District (3/1/77) supra, EERB Decision No. 10 (establishing a separate unit of skilled crafts and maintenance employees not including food services employees); Sacramento City Unified School District (9/20/77) supra, EERB Decision No. 30 (establishing a separate unit of security officers); and Shasta Union High School District (10/25/77) EERA Decision No. 34; Greenfield Union School District, (10/25/77) EERB Decision No. 35; and Fallbrook Union High School District (12/4/78) PERB Decision No. 78 (establishing combined units of instructional aides and office technical business services employees).

<sup>7</sup>Foothill-DeAnza Community College District, supra, EERB Decision No. 10 at 2; Fallbrook Union High School District (12/4/78) PERB Decision No. 78 at 6.

unit when it is petitioned for or agreed to, even when a variant unit is sought that is also appropriate. This does not mean that a variant unit will never be awarded in competition with a Sweetwater unit, but only that a variant unit will not be awarded unless it is more appropriate than the Sweetwater unit based on a separate and distinct community of interest among employees in the variant unit or other section 3545(a) criteria.<sup>8</sup>

If a variant unit could be awarded only when the Sweetwater unit was inappropriate, in effect the presumptively appropriate units would be "most" or "only" appropriate units. The EERA

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<sup>8</sup>Consider, e.g., Sweetwater Union High School (11/23/76) EERB Decision No. 4 (declining to establish a separate transportation or custodial-gardening unit because "neither has a community of interest separate and distinct from the other classified employees who remain after the establishment of the instructional aides and office-technical and business services unit"); Fremont Unified School District (12/16/76) EERB Decision No. 6 (school operations, skilled trades and crafts, transportation and food services units rejected because "we find that the distinguishing characteristics, taken together, are not sufficient to establish a separate community of interest and therefore a separate appropriate unit because the distinguishing characteristics do not substantially distinguish the employees in the requested unit from the other classified employees"); San Diego Unified School District (2/18/77) EERB Decision No. 8 ("[i]n the absence of a showing of a separate and distinct community of interest which would distinguish food service, maintenance, or custodial employees from other classified employees, we find that these other proposed units are not separate appropriate units"); Sacramento City Unified School District (9/20/77) EERB Decision No. 30 ("the classified employees as a whole do not constitute an appropriate unit because they lack sufficient community of interest").

does not prescribe that "the most appropriate" unit be awarded; rather, the statute repeatedly refers to "an appropriate unit."<sup>9</sup> Thus by requiring an employee organization to establish that a variant unit is more appropriate than a Sweetwater unit, the Board gives weight to its preference for Sweetwater units without converting them into "most appropriate" or "only appropriate" units. In this sense, an employee organization need not rebut the Sweetwater presumption in order to obtain a variant unit.

In contrast, to defeat the establishment of a Sweetwater unit when no other unit has been petitioned for, the employer or employee organization<sup>10</sup> must demonstrate that based on all of the criteria enumerated in section 3545(a), the Sweetwater unit is in fact inappropriate. Since the Board has determined that the Sweetwater units presumptively meet the section 3545(a) unit determination criteria, a Sweetwater unit will invariably be granted when no other unit is requested unless the presumption is rebutted by evidence showing that, because the section 3545(a) criteria are not in fact met, the Sweetwater unit is inappropriate.

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<sup>9</sup>Sections 3540, 3540.1(e), 3543.1(a), 3543.1(d), 3544(a), 3544.3. See also section 3541.3(a). The only statutory reference to "the appropriate unit" occurs in section 3544.3, in which "the" clearly refers back to "an appropriate unit."

<sup>10</sup>See section 3544.1(b).



In the instant case, based on the record as a whole, CBTA has not proved that skilled craft employees have a community of interest separate and distinct from operations and support employees. Rather, as in Sacramento City Unified School District, supra, EERB Decision No. 30, a strong community of interest unites all operations-support services employees.

Like other operations-support employees, skilled crafts employees work to provide a proper physical environment and support services for students. The hiring and firing procedure is the same for all classified employees; all have the same salary schedule and fringe benefits; all are subject to the same rules and regulations. Like other operations-support personnel, skilled crafts employees are supervised through a line that is ultimately responsible to the business services division administrator. They report directly or indirectly to the maintenance director, who in turn is responsible to the director of maintenance and operations. The director of maintenance and operations is in charge of gardeners and custodians as well as painters, plumbers, carpenters, and electricians.

Additionally, there is evidence that on at least two occasions a "non-skilled" employee has transferred into a "skilled" position covered by CBTA's request. Furthermore, it appears that there is a symbiotic relationship between the broader operations support services unit and the proposed

skilled crafts unit. For example, the trucks used by skilled crafts employees are stored and fueled by the transportation department, which also repairs some of the equipment used by maintenance and operations personnel. District rules command custodial employees to aid maintenance workers under certain circumstances.

Based on their similar work goals, working conditions, and common supervision, as well as on their integrated work functions, the Board finds that all operations-support services employees share a community of interest. While EERA instructs the Board to consider the extent to which employees in a proposed unit belong to the same employee organization (sec. 3545(a)), 84 percent membership in CBTA in this case does not by itself compel a finding that a separate skilled crafts unit is more appropriate than a comprehensive operations-support services unit.

The hearing officer's decision establishing a comprehensive operations-support services unit including skilled crafts employees is accordingly affirmed.

#### ORDER

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

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

Unit A) All operations-support services employees including skilled crafts employees; excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties and head custodians I.

Unit B) As stipulated by the parties, all "instructional aides" (paraprofessionals); excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties.

Unit C) As stipulated by the parties, all "office-technical and business services employees;" excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties.

Unit D) As stipulated by the parties, all "security officers" excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties.

2. Head custodians I are found to be "supervisory" employees within the meaning of the EERA.

Within ten (10) workdays after the employer posts the Notice of Decision, each employee organization shall demonstrate to the regional director at least 30 percent support in each of the above units.

The regional director shall conduct an election at the end of the posting period if:

(1) More than one employee organization qualifies for the ballot, or

(2) Only one employee organization qualifies for the ballot in each unit and the employer does not grant voluntary recognition.

Voluntary recognition requires majority proof of support in all cases. See sections 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 units.

By: Barbara D. Moore, Member

Harry Gluck, Chairperson

Raymond J. Gonzales, Member, Concurring:

I agree with the result reached by my colleagues in the present case but I find their rationale wholly unacceptable and I reject the standard which they would apply to rebut the Sweetwater presumption. What the majority has done in this decision is to continue the erosion of a reasonable uniting structure envisioned by the EERA.

It is unnecessary to engage in endless semantic exercises over the meaning of the article "an" in section 3545(a). Clearly, Sweetwater units are not the "only" units which the Board will establish nor will "any" variant unit be established simply because it meets 3545(a) criteria. It is not even necessary to speculate whether a Sweetwater unit is the "most" appropriate unit under all circumstances; it is enough to say that under the facts of any given case, a Sweetwater unit, if established, would logically be the "most appropriate" unit or there would be no reason to select it. Nevertheless, what is critical is that the Board has established a presumption, which comports with the statutory requirements of section 3545(a) and lends itself to the efficient determination of units. That being so, the Board must give effect to that presumption by requiring parties to present evidence which in fact rebuts the presumption, that is, evidence which demonstrates that the Sweetwater units are inappropriate.

Instead, however, the majority all but abandons the Sweetwater presumption in this decision by failing to impose any significant burden of proof on the party petitioning for a variant unit. I believe that the Sweetwater presumption is more than a procedural device affecting the burden of producing evidence. I therefore disagree with the majority's approach of disregarding Sweetwater simply because a variant unit displays a separate community of interest. On the basis of this latest

decision, it appears inevitable that we will see an extreme proliferation of units in the education setting, each demonstrating a separate community of interest without distinguishing itself from the Sweetwater unit.<sup>1</sup> This would be contrary to the clear statement we made in Sacramento City, supra:

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.

In previous cases where we have applied the Sweetwater presumption, we have emphasized that a "separate and distinct" community of interest must exist among the employees in a proposed variant unit before the variant unit will be established. Presenting such evidence invites a comparison of the variant unit with the Sweetwater unit; otherwise, how can the two be distinguished from each other? The inevitable result of comparing the two units is rejection of one and establishment of the other (or, as the majority states, one is "awarded in competition with" the other).

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<sup>1</sup>The standard set forth by the majority in the present case might very well lead, in similar factual circumstances, to acceptance of proposed variant units which we rejected in earlier decisions such as Fremont Unified School District (12/16/76) EERB Decision No. 6; San Diego Unified School District (2/18/77) EERB Decision No. 8; and Sacramento City Unified School District (9/20/77) EERB Decision No. 30.

It is apparent to me that section 3545(a) requires an affirmative showing that the unit determination criteria have been met (that is precisely what Sweetwater presumes); therefore, before the Board may disregard the Sweetwater unit, it must have proof that, not only do the employees in the proposed variant unit lack a community of interest with the remaining Sweetwater unit employees, but also that the variant unit itself possesses a separate and distinct community of interest. Accordingly, I would treat the Sweetwater presumption as having an effect on the burden of the party proposing the variant unit to prove first that the Sweetwater unit is inappropriate. This is in fact what my colleagues, perhaps unwittingly, have required of employers and employee organizations who intervene to defeat the establishment of a Sweetwater unit when no other unit has been petitioned for, i.e., those parties "must demonstrate that based on all the criteria enumerated in section 3545(a), the Sweetwater unit is in fact inappropriate."<sup>2</sup>

Finally, I emphasize my belief that the establishment of the Sweetwater units was more than the expression of a preference, which implies the exercise of a subjective value

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<sup>2</sup>Majority decision, at 8.

judgment as to the type of unit that should be favored. Rather, the Board applied the objective criteria of section 3545(a) in establishing the Sweetwater units and it must accord the Sweetwater presumption its due weight or acknowledge that there is, in reality, no such presumption.

~~Raymond J. Gonzales~~, Member



PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of:

COMPTON UNIFIED SCHOOL DISTRICT,

Employer,

and

CALIFORNIA TEAMSTERS, PUBLIC, PROFESSIONAL,  
AND MEDICAL EMPLOYEES UNION, LOCAL 911,  
AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA,

Employee Organization,

and

LOS ANGELES COUNTY BUILDING AND TRADES  
COUNCIL, COMPTON BUILDING TRADES COUNCIL,

Employee Organization,

and

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,  
COMPTON CHAPTER NO. 30,

Employee Organization,

and

LOS ANGELES CITY AND COUNTY SCHOOL  
EMPLOYEES UNION, LOCAL 99, SEIU,

Employee Organization.

Case Nos. LA-R-310  
LA-R-311  
LA-R-350  
LA-R-718

PROPOSED DECISION

January 27, 1978

Appearances: Edna E.J. Francis, Attorney (Paterson & Taggart), for Compton Unified School District; Robert D. Vogel, Attorney (Brundage, Beeson & Pappy), for California Teamsters, Public, Professional, and Medical Employees Union, Local 911; Donald L. Goodman and Rose Dick for California School Employees Association, Compton Chapter No. 30; William J. Smith, Attorney (Brundage, Beeson & Pappy), for Los Angeles County Building and Trades Council, Compton Building Trades Council; Robert Anderson, Los Angeles City and County School Employees Union, Local 99, AFL-CIO.

Before Kenneth A. Perea, Hearing Officer.

## PROCEDURAL HISTORY

The events preceding the administrative hearing in the above-captioned matter are summarized as follows:

(1) On April 1, 1976, Compton Building Trades Association (CBTA) filed with the Compton Unified School District (District) a request for a unit of skilled crafts employees and California Teamsters, Public, Professional, and Medical Employees Union, Local 911 (Teamsters) filed requests for separate units of drivers and security officers.

(2) On April 15, 1976, California School Employees Association, Compton Chapter No. 30 (CSEA) filed an intervening petition for a comprehensive unit of classified employees.

(3) On April 28, 1976, the District responded to the petitions filed by CBTA, Teamsters and CSEA, requesting "that the EERB determine the appropriateness of the unit which is in dispute."

(4) On May 4, 1976, Los Angeles City and County School Employees Union, Local 99 (SEIU) filed four intervening petitions for separate units of food services, operations, security and accounting clerk employees.

(5) On September 22, 1976, the District responded to the petitions filed by SEIU doubting the sufficiency of proof of thirty percent support for the petitioned for accounting clerk and food services units.

(6) On September 22, 1976, the District amended its response to the petitions filed by CBTA, Teamsters and CSEA stating that it doubted the sufficiency of proof of majority support for Teamsters' and CSEA's petitions.

(7) The Los Angeles Regional Director for the Public Employment Relations Board (PERB), formerly the Educational Employment Relations Board (EERB), conducted an investigation into the sufficiency of support for the above-described petitions and notified the parties of the following findings:

- a. Teamsters' request for a proposed unit of drivers lacked adequate support;

- b. Teamsters' request for a proposed unit of security officers lacked adequate support;
- c. SEIU's request for a proposed unit of accounting clerks lacked adequate support;
- d. CSEA filed as an intervenor and satisfied the requisite 30 percent showing of support;
- e. CBTA qualified as a majority petitioner; and
- f. SEIU qualified as an intervenor.

(8) Prior to the commencement of the hearing on June 29, 1977, Teamsters made application to join the hearing as a party pursuant to Section 33340 of the PERB's rules and regulations, which application was granted by the hearing officer.

A hearing was held on June 29, August 25 and August 26, 1977, at which time the parties amended and restated their positions. The District, SEIU and CSEA agreed upon creation of the three presumptively appropriate units established by the PERB in Sweetwater Union High School District<sup>1</sup> and Fremont Unified School District<sup>2</sup> -- operations support, office technical and paraprofessional -- with the addition of a fourth and separate security unit.<sup>3</sup> The Teamsters support the separate security unit and have no interest regarding the other units. CBTA proposes that a separate crafts unit be split out from the operations support unit and takes no position regarding the appropriateness of any other units.

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<sup>1</sup>EERB Decision No. 4, November 23, 1976.

<sup>2</sup>EERB Decision No. 6, December 16, 1976.

<sup>3</sup>Since the hearing in this matter, the PERB itself has held that a separate unit of security officers is appropriate. Sacramento City Unified School District, EERB Decision No. 30, September 20, 1977.

From the above discussion, it is apparent that there is no dispute amongst the interested parties as to the creation of an office technical unit, a paraprofessional unit or a security unit within the district. Therefore, the parties' positions are accepted as stipulations and an election in these units is directed by the proposed order in this decision without further inquiry. The appropriate unit dispute shall be limited to a crafts unit separate from an operations support unit as opposed to a single operations support unit.

It was stipulated by the parties that the following employees are "confidential" pursuant to Section 3540.1(c):<sup>4</sup> secretary to the superintendent, eight administrative secretaries, superintendent's office secretary, budget technician, budget secretaries and personnel assistants.

The parties further stipulated that the following employees are "management" pursuant to Section 3540.1(g): director of accounting, director of budgeting, director of classified personnel, director of certificated personnel, director of maintenance and operations, director of purchasing, director of transportation, director of security, director of food services, coordinator--special services, business administrator--services, business administrator--finance.

It was stipulated that the following classifications are "supervisory" pursuant to Section 3540.1(m): attendance accounting coordinator, cafeteria manager, head custodians II, III and IV, security officer II, security sergeant, transportation foreman, transportation shop foreman, accounting supervisor, warehouse supervisor, records management supervisor, operations supervisor, assistant operations supervisor/grounds, maintenance supervisor, custodial

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<sup>4</sup>All statutory references are to the California Government Code unless otherwise specified.

supervisor, grounds supervisor, supervisor of food services programs, food services supervisor and assistant operations supervisor-custodian.

The hearing officer accepts the above-described stipulations without inquiry. The District and CSEA take the position that head custodians I should be included in an operations-support services unit. SEIU takes the position that head custodians I are "supervisors" pursuant to Section 3540.1(m).

At the hearing, CBTA amended its petition to include all carpenters, carpenter supervisors, clock and bell technicians, electrical supervisors, electricians, glaziers, locksmiths I and II, maintenance workers I and II, painters I, painting foremen, painting supervisors, plumbers, plumbing supervisors, refrigeration technicians, typewriter technicians, welders, refrigerator repairmen (cafeteria), audio/visual technicians, alarm systems repairmen, air conditioning technicians, equipment repairmen (cafeteria), equipment repairmen helper (cafeteria).

At the hearing, the Teamsters stated that its interest in the proceedings was limited to representation of a separate security unit. Following the Teamsters' failure to appear at other portions of the hearing, counsel for the district moved to dismiss with prejudice the Teamsters from the hearing. The motion was taken under advisement and is hereby denied. By not appearing at other portions of the hearing, the Teamsters simply waived its right to present evidence or argument on issues upon which it previously declared it had no interest. Under these facts, a dismissal with prejudice would serve no purpose.<sup>5</sup>

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<sup>5</sup>As of this date, the Teamsters have not made to the Regional Director a 30 percent showing of interest in any unit found to be appropriate in order to qualify to appear on an election ballot pursuant to PERB Regulation 33480.

## STATEMENT OF THE ISSUES

1. Whether a separate unit of skilled crafts employees is an appropriate unit pursuant to Section 3545(a).

2. Whether head custodians I are supervisors pursuant to Section 3540.1(m).

## FINDINGS OF FACT

### A. Skilled Crafts Employees

In June of 1975, CBTA sought recognition from the District as an employee organization pursuant to the Winton Act, Education Code Section 13080 et seq., repealed effective July 1, 1976. Pursuant to CBTA's request, the District mistakenly granted recognition to Plumbers' Local No. 78 in October of 1975.

Subsequently, CBTA requested in writing to meet and confer pursuant to the Winton Act with appropriate District administrators. On two occasions CBTA did meet with representatives of the District to establish ground rules for future meet and confer sessions. Attempts were unsuccessfully made by CBTA to arrange actual meet and confer sessions with District administrators for the purpose of discussing wages and working conditions for the District's skilled crafts employees.

Some time after July 1, 1976, CBTA filed an unfair practice charge pursuant to the Educational Employment Relations Act (EERA) on behalf of members of CBTA. CBTA has not filed any grievances on behalf of its members.

The District's Business Services Division is composed of special services, food services, maintenance and operations, public works, security and transportation departments.

The maintenance and operations department is composed of custodial and grounds and maintenance sections.

The maintenance section is composed of carpentry, electrical, plumbing and painting shops.

Employees in the carpentry, electrical, plumbing and painting shops report to the supervisor of the maintenance section. The supervisor of the maintenance section, like the supervisor of the grounds and maintenance section, reports to the director of the maintenance and operations department. The director of the maintenance and operations department, like the director of the special services, food services, public works, security and transportation departments, reports to the business services division administrator.

The District's painters perform journeyman painter duties in the preparation of surfaces for painting, mixing and application of paints. Minimum qualifications include the equivalent to graduation from high school or a recognized trade school in painting, completion of an apprenticeship as a painter, and knowledge of standard practices, methods, materials and equipment used in painting, tinting and finishing work.

The District's electricians perform journeyman electrician duties involving the repair, alteration, construction, installation and maintenance of all types of electrical systems and equipment. Minimum qualifications include the equivalent to graduation from high school or a recognized trade school in electricity, completion of an apprenticeship as an electrician and knowledge of the National Fire Prevention Codes, methods, materials and tools used in the electrical trade.

The District's plumbers perform journeyman plumber duties in the repair or installation of plumbing fixtures, rough plumbing and maintenance of central heating plants. Minimum qualifications include the equivalent to graduation from high school or a recognized trade school in plumbing, completion of an apprenticeship as a plumber and knowledge of the Uniform Plumbing Code and standard practices and processes of the plumbing trade.

The District's carpenters perform journeyman carpenter duties including general maintenance work. Minimum qualifications include the equivalent to graduation from high school or a recognized trade school in carpentry, completion of an

apprenticeship as a carpenter and knowledge of the standard practices of the carpentry trade including materials, tools and procedures used in both rough and finished carpentry.

Employees of the carpentry, electrical, plumbing and painting shops work exclusively with other employees in the maintenance section. Maintenance men II in the carpentry, electrical and plumbing shops can become journeymen through informal on-the-job training. Employees in the carpentry, electrical, plumbing and painting shops report to work at individual shops from where they are dispatched to the various District locations where they perform work.

The parties further stipulated as follows:

If called to testify, a glazier, clock and bell technician, refrigerator repairman, air-conditioning technician, equipment repairman, welder, typewriter repairman, locksmith, audio/visual technician, or alarm system repairman, would testify that they are all skilled employees whose skill is acquired through an informal progression from apprentice to journeyman, through on-the-job training, and/or classroom education; that all report to Lloyd Brooks [director, maintenance and operations department], and that all work almost exclusively in conjunction with other maintenance employees.

Work performed by food services, maintenance and operations and transportation employees is of a manual nature.

The hiring and termination procedures is the same for all District classified employees. All District classified employees have the same salary schedule, fringe benefits and rules and regulations.

The minimum educational requirements for entry-level positions in food services, transportation and maintenance and operations departments is completion of the tenth grade while many of the positions require the equivalent to graduation from high school.

In the last year and a half, two custodial employees from the operations section have transferred to the maintenance section of the maintenance and operations department -- one to maintenance worker I and one to maintenance worker II.



CSEA and SEIU have represented all classified employees since June 30, 1970.

B. Head Custodians I

Head custodians I are assigned a custodial crew of four to six employees.

Head custodians I prepare work assignments for custodial crews at each school site in the District. Should a member of a head custodian I's crew request a leave of absence, it is the head custodian I's responsibility to reschedule the crew's work schedule or schedule a substitute custodian in order to insure that the custodial work at a given site is completed.

Head custodians I conduct weekly inspections of each custodial crew member's work. If deficiencies occur in a custodial crew member's work, it is the head custodian I's responsibility to counsel and instruct that member regarding proper custodial methods.

Head custodians I prepare formal written evaluations of each member of his crew and discusses with each crew member their evaluation. Head custodians I jointly interview with the school principal custodians who may be assigned to their respective school sites. The head custodians I then make a recommendation to the school principal as to whether a potential crew member should be assigned to his crew. Said recommendations are followed by the school principal.

It is the responsibility of head custodians I to document performance problems of custodial crew members. Head custodians I have the authority to give verbal reprimands and recommend disciplinary action against custodial crew members such as suspension without pay and dismissal. Said recommendations are generally followed.

It is the responsibility of head custodians I to maintain payroll sign-in sheets at their respective school sites and to adjust vacation schedules for their custodial crews.

If there is a particular custodial problem at a school site, the school principal will consult with the head custodian I who will then assign a custodian to resolve the problem.

#### DISCUSSION AND CONCLUSIONS

##### A. Skilled Crafts Employees

The PERB itself has recently addressed the question of whether a separate unit of skilled crafts employees is appropriate pursuant to the EERA in Sacramento, supra. In Sacramento City Unified School District, skilled crafts employees are paid on a separate salary schedule, are required to have undergone an apprenticeship program, work a twelve-month year and an eight hour day, and are assigned to work from a central location.

While acknowledging that "[s]killed crafts employees are different in some respects from other operations-support services employees" and "possess discrete skills," the PERB nevertheless held:

The primary work function of skilled crafts employees, like other operations-support services employees, is essentially to provide a proper physical environment and support services for students. A separate unit is not warranted merely because of group of employees share a community of interest among themselves, when a homogeneous group forms only a part of a larger essentially homogeneous group sharing similar conditions of employment and job functions. Thus, while we have determined that security officers constitute a separate appropriate unit, this decision is primarily based on the strong policy considerations of the unique function of security guards; these policy considerations are inherent to guards but not to the skilled craftsmen.

The parallels between job functions of the District's skilled crafts employees and Sacramento City Unified School District's skilled crafts employees are many.

The primary work function of the District's skilled crafts employees, as with other operations-support services employees, is essentially to provide a proper physical environment and support services for students. Skilled crafts employees

are primarily assigned to work from a central location and form a part of a larger essentially homogeneous group of operations-support services employees sharing similar conditions of employment and job functions. All classified employees including skilled crafts employees have the same fringe benefits and rules and regulations.

Indeed, the case for creation of a skilled crafts unit in the District is weaker than in the Sacramento City Unified School District. In the Sacramento City Unified School District, skilled crafts employees are paid on a separate salary schedule. In the District, skilled crafts employees are compensated pursuant to the District's classified salary schedule. In the Sacramento City Unified School District, skilled crafts employees are required to have undergone an apprenticeship program. In the District, maintenance men II in the carpentry, electrical and plumbing shops can become journeymen carpenters, electricians and plumbers through informal on-the-job training.

Thus, the hearing officer is compelled to conclude, based upon the evidence presented and Sacramento, supra, that a separate unit of skilled crafts employees is inappropriate pursuant to the EERA.

B. Head Custodians I

Section 3540.1(m) defines a supervisory employee as follows:

"Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Emphasis added)

As the PERB itself held in Sweetwater, supra:

This section of the Act is written in the disjunctive; therefore, an employee need not possess all the enumerated functions or duties to be a supervisor. The performance of any one of the enumerated actions or the effective power to recommend such action is sufficient to make one a supervisor within the meaning of the Act. [Footnote omitted.]

1. Authority to Assign

Head custodians I jointly interview with the school principal custodians who may be assigned to their respective school sites and then effectively recommend which custodians should be assigned to their crews. Thus, like school plant managers I, II, and III in Sacramento,<sup>6</sup> found to be "supervisors" by the PERB itself, head custodians I have the authority to assign employees to their crews.

2. Authority to Discipline

Head custodians I prepare formal written evaluations of each member of his crew and discuss with each member their evaluations. It is the responsibility of the head custodians I to document performance problems of custodial crew members. Head custodians I have the authority to give verbal reprimands and recommend disciplinary action against custodial crew members. Thus, like building services supervisors III and IV in San Diego,<sup>7</sup> found to be "supervisors" by the PERB itself, head custodians I have the authority to discipline employees.

3. Authority to Assign Work To and Direct

Head custodians I conduct weekly inspections of each custodial crew member's work, counsel and instruct crew members, should deficiencies in their work occur.

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<sup>6</sup>PERB Decision No. 30A, October 19, 1977.

<sup>7</sup>PERB Decision No. 8, February 18, 1977.

Head custodians I prepare work assignments for custodial crews, adjust variation schedules and reschedule the crew's work schedule should a crew member be absent. Head custodians assign custodians to correct particular custodial problems brought to their attention by their school principal. Thus, like the head custodians in Sweetwater, supra. found to be "supervisors" by the PERB itself, head custodians I have the authority to assign work to and direct employees.

Therefore, head custodians I possess at least three indicia of supervisory status as enumerated in Section 3540.1(m): the authority to assign, discipline and assign work to and direct employees. Accordingly, it is concluded that head custodians I are "supervisors" pursuant to the EERA.

#### PROPOSED ORDER

It is the Proposed Decision that:

(1) The following units have been agreed to by the interested parties as appropriate for the purpose of meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit A -- All "security officers"; excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties and head custodians I.

Unit B -- All "instructional aides" (paraprofessionals); excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties and head custodians I.

Unit C -- All "office-technical and business services employees"; excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties and head custodians I.

(2) The following unit is found to be appropriate for the purpose of meeting and negotiating provided an employee organization becomes the exclusive representative:

Unit D -- All operations-support services employees including skilled crafts employees; excluding all other employees including management, supervisory, and confidential employees as stipulated by the parties and head custodians I.

(3) Head custodians I are found to be "supervisory" employees within the meaning of the EERA.

The parties have seven (7) calendar days from receipt of this Proposed Decision in which to file exceptions in accordance with Section 33380 of the PERB Rules and Regulations. If no party files timely exceptions, this Proposed Decision will become final on February 8, 1978, and a Notice of Decision will issue from the Board.

Within ten (10) workdays after the employer posts the Notice of Decision, each employee organization shall demonstrate to the Regional Director at least 30 percent support in each of the above units. The Regional Director shall conduct an election at the end of the posting period if (1) more than one employee organization qualifies for the ballot, or (2) only one employee organization qualifies for the ballot in each unit and the employer does not

grant voluntary recognition. Voluntary recognition requires majority proof of support in all cases. See Sections 3544 and 3544.1.

The date used to establish the number of employees in the above 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.

Dated: January 27, 1978

Kenneth A. Perea  
Hearing Officer