

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	Representation
)	Case No. SF-R-28X
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER 334,)	
)	
Employee Organization,)	PERB Decision
)	No. 165
and)	
)	
UNITED PUBLIC EMPLOYEES, LOCAL 390 SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,)	June 22, 1981
)	
)	
Employee Organization.)	
)	

Appearances: Jon A. Hudak, Attorney (Breon, Galgani & Godino) for Livermore Valley Joint Unified School District; Charles L. Morrone, Attorney (Wax, Howard, Searle and Morrone) for California School Employees Association, Chapter 334; Stewart Weinberg and W. Daniel Boone, Attorneys (Van Bourg, Allen, Weinberg and Roger) for United Public Employees, Local 390, SEIU, AFL-CIO.

Before Gluck, Chairperson; Moore and Tovar, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by the Livermore Valley Joint Unified School District (hereafter District) and California School Employees Association, Chapter 334 (hereafter CSEA) to the hearing officer's proposed decision finding the

severance of an operations-support services unit from the existing wall-to-wall unit of classified employees to be appropriate. The severance petitioner, United Public Employees, Local 390, Service Employees International Union, AFL-CIO (hereafter SEIU) excepts to the placement of certain disputed classifications.

PROCEDURAL HISTORY

On April 1, 1976, CSEA requested recognition in a wall-to-wall unit of the District's classified employees. On that same date, Teamsters Local 853, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (hereafter Teamsters) filed a request for recognition in a unit of bus drivers and mechanics. On April 30, 1976, the District indicated that it doubted the appropriateness of the unit proposed by the Teamsters. A formal unit determination hearing was held, as a result of which a hearing officer found the wall-to-wall unit appropriate. The Teamsters did not appeal that ruling. CSEA was certified as the exclusive representative in the wall-to-wall unit on October 4, 1977.

On March 27, 1980, SEIU timely filed the petition which is the subject of the instant case seeking to carve an operations-support services unit out of the existing wall-to-wall configuration. On April 17, 1980, a formal hearing on the petition was held before Hearing Officer

Terrell J. Lindsey. CSEA, SEIU, and the District were represented and fully participated in that proceeding.

In his proposed decision, the hearing officer found that severance was appropriate and ordered an election in the operations-support services unit sought by SEIU. He did not, however, include the maintenance and transportation specialist classifications in the operations and support unit.

FACTS

The hearing officer's findings of fact are substantially correct and are adopted as the findings of the Board. Additional facts will be noted in the course of the discussion which follows. The hearing officer's proposed decision is attached hereto and incorporated by reference herein.

DISCUSSION

In considering the appropriateness of proposed units, PERB is governed by section 3545 of the Educational Employment Relations Act (hereafter EERA)¹ which reads in part:

(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

¹The EERA is codified at Government Code section 3540 et seq. Unless otherwise specified, all statutory references are to the Government Code.

In applying the statutory criteria set forth in section 3545(a) to determinations as to appropriate units of classified employees, early in its history the Board found an operations and support services unit to be appropriate.

Sweetwater Union High School District (11/23/76) EERB Decision No. 4.²

In Sweetwater, the Board established three classified units which have come to be characterized as presumptively appropriate. In addition to an operations-support services unit such as that sought here, the Board established units of instructional aides (paraprofessionals) and office-technical and business services employees. The Board has granted such units when sought, virtually without exception, having determined that a strong community of interest and a lack of conflict of interest generally exists among employees in each of these groups and, further, 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 (11/7/77) EERB Decision No. 37, at p.7.

²Prior to January 1, 1978, PERB was called the Educational Employment Relations Board (EERB).

Moreover, the Board has clearly expressed a strong preference for the three Sweetwater classified employee units, stating that a variant unit will not be granted when sought in competition with a Sweetwater unit ". . . unless it is more appropriate than the Sweetwater unit based upon a separate and distinct community of interest among employees in the variant unit or other section 3545(a) criteria." Compton Unified School District (10/26/79) PERB Decision No. 109.

This strong expression of preference for Sweetwater units was heavily relied upon by the hearing officer when he placed the burden upon the District and CSEA to establish that the wall-to-wall classified unit presently in existence is a more appropriate grouping than the operations-support services unit sought. We find that, based upon the criteria set forth in section 3545(a) of the EERA, CSEA and the District have failed to overcome the presumption.

This is only the second severance request to reach the Board.³ The severance setting is factually different from an initial unit determination because negotiating history must be considered when evaluating a severance request. Such a request, however, is governed by the criteria of

³The Board granted the first severance request, in Redondo Beach City School District (1/17/80) PERB Decision No. 114, under different factual circumstances.

section 3545(a) of the EERA, just as is an initial determination. Negotiating history, as one of these criteria, is an important factor, and a stable negotiating relationship will not be lightly disturbed. Nonetheless, it is but one of several criteria looked to by the Board. The basic test set forth in the statute, as it has been expressed in terms of the Compton preference for the presumptively appropriate Sweetwater units, governs the severance inquiry as it does an initial unit determination.

COMMUNITY OF INTEREST

The community of interest factors relied upon by the hearing officer in this case are substantially similar to those relied upon by the Board in Sweetwater and its progeny. Thus, with respect to the transportation employees, all are based at a central transportation yard, geographically remote from the District Office and schools. All are supervised by a transportation director. The job function of each is related to transporting students and supplies.

With respect to the food service employees, the record reflects that they work in the kitchens and cafeterias of the various schools. The job duty of each is directly related to the preparation and dispensing of food or the maintenance of food preparation and serving areas. They share common supervision by the food service director.

The other employees in this operations-support service unit constitute the functional equivalent of a blue-collar production and maintenance unit. They are responsible for cleaning, maintaining, and renovating the physical plant and moving its appurtenances. The employees in this grouping work out of the maintenance yard and the District Office work site (with the exception of groundskeepers and custodians who work throughout the District). Most employees in the production and maintenance grouping are supervised by the maintenance director.

We agree with the hearing officer's finding that the employees in the operations-support services unit share a distinct functional similarity in that all work with their hands and tools to create and maintain the District's physical environment and to provide support services for students. On examination of the above factors in light of established Board precedent, it is clear that they share a community of interest distinct from the paraprofessional and clerical employees who constitute the remainder of the classified unit.⁴

⁴The hearing officer found that the community of interest factors militating in favor of a wall-to-wall unit are insufficient to tip the balance in favor of continuing such a configuration. We agree. At most, the record indicates some minor overlap in work locations wall-to-wall, minimal and incidental interface between operations-support services employees and others, and some common terms and conditions of employment such as common benefit packages. We are not persuaded that these indicia of community of interest outweigh factors such as the overall functional similarities shared by operations-support personnel, relied upon by the hearing officer and referenced above.

EFFICIENCY OF OPERATIONS

We find with the hearing officer that insufficient evidence was presented from which it could be concluded that establishment of an operations-support services unit would have a detrimental effect on the efficiency of operations. District witnesses opined that if they were forced to conduct two sets of negotiations with respect to classified employees it would take much longer and be unduly disruptive of the schedule of their administrative team. However, that opinion was admittedly and unavoidably speculative. While we are not unsympathetic to the District's concern that negotiating in more than one unit may burden its staff, the assertion of such a concern, without more, is not sufficient to establish an undue impediment to District efficiency. The fact that negotiating may impose a burden on the employer was undoubtedly considered by the Legislature but found not to outweigh the benefits of an overall scheme of collective negotiations.⁵ Absent concrete evidence that the District's operational efficiency would be unduly impaired by an additional series of negotiations, we are not persuaded that this factor militates against establishment of the operations-support services unit

⁵In this regard, see Mendocino Community College District (11/4/80) PERB Decision No. 144.

sought herein. Where, as here, such concrete evidence is lacking, it would be incongruous to hold that two units of classified employees would unduly impair District efficiency in light of the Board's consistent expression of a strong preference for three units of classified employees and the explicit determination expressed in Antioch, supra, that the three classified units strike a balance between the District's desire to be free of excessive unit fragmentation and the need of employees and organizations to work within sufficiently divided groupings.

EXTENT OF ORGANIZATION

There are approximately 440 employees in the District's wall-to-wall classified unit. Approximately 136 classified employees belong to CSEA. There are approximately 149 employees in the petitioned-for operations-support services unit. Approximately 51 of those employees are CSEA members. Thus, CSEA can count but one-third of the wall-to-wall unit among its membership. We find with the hearing officer that the extent of membership in CSEA is not persuasive as to the efficacy of a wall-to-wall unit. This is particularly true where, as here, 112 of the 149 operations-support services employees submitted cards on behalf of SEIU's petition for severance.

NEGOTIATING HISTORY

This Board has long held that negotiating history is among the "other things" comprising the category of "established practices" in section 3545(a) of the EERA. Antioch, supra, at p.5. Whereas in earlier unit determinations, negotiating history has been accorded relatively little weight, the Board has expressed an interest in giving greater deference to this factor where appropriate. In a case where, as here, a unit has been established under the EERA and agreements have been negotiated covering employees in that unit, greater reliance on that negotiating history is appropriate.

The record reflects and the hearing officer found that the District and CSEA have negotiated two successive agreements, one for a term of slightly less than one year and another for a two-year term. It appears that CSEA has solicited input from all segments of the classified units regarding negotiating positions and that persons in classifications in the operations-support services grouping have served on CSEA's negotiating committees and as officers of that organization.

However, the record further reflects that there has been widespread dissatisfaction amongst the operations-support services personnel regarding CSEA's representation. An upgrade in classification pursuant to the 1979 wage reopener was applied more extensively to the clerical classifications and

left out many of the blue collar employees. Uncontroverted record testimony indicates that, while this issue may well have been the proverbial straw that broke the camel's back, discontent amongst blue collar employees over the quality of representation received by them vis-a-vis, in particular, that received by clerical employees was preexisting and widespread throughout the blue collar unit. CSEA failed to present any witnesses from the blue collar work force which would tend to rebut this evidence of widespread dissatisfaction.

As noted by the hearing officer, CSEA, in recognition of the special needs and concerns of transportation employees, consulted with a group of them separately, and a separate section of the agreement was then devoted to their areas of concern. While seeking particular input from transportation employees and negotiating a separate contract article reflects an effort to give full voice to concerns of all unit employees and is not alone persuasive evidence of a lack of community of interest, the necessity for such action tends to indicate that CSEA and the District recognized some separation between at least one sector of the operations-support services unit and other classified employees.

The fact that over 75 percent of those blue collar employees submitted cards in favor of SEIU provides a further indication that the negotiating relationship between CSEA and

the District is not as stable as it might appear at first blush. We do not mean to imply by the foregoing discussion that we find that CSEA has been less than diligent or fair in its efforts to represent all classified employees equally. This is neither the purpose of our inquiry nor the issue in the case. Rather, we are citing the expressed dissatisfaction of unit members and drawing appropriate conclusions from that expression only insofar as it casts doubt upon the stability of the collective negotiating relationship.

While the wall-to-wall unit was established pursuant to the procedures of this Board, the limited nature of the litigation which attended that process militates against granting the unit and the negotiating history therein the deference to which it might otherwise be entitled. Thus, we note that, when the wall-to-wall unit was sought by CSEA in 1976, the only opposition to that petition was mounted by the Teamsters who sought a unit of bus drivers only. Further, once a hearing officer found the wall-to-wall unit appropriate and did not allow bifurcation, the Teamsters did not pursue the matter. Thus, the wall-to-wall unit was established by means of an unappealed hearing officer's decision which, while it may have been correct and instructive in light of the litigation which took place at the time, has little relevance for the severance inquiry in which we are presently engaged.

Further, that decision⁶ became final on August 10, 1977, prior to the issuance of Antioch, Compton, and other cases whereby the Sweetwater units became presumptively appropriate as well as preferred in the eyes of the Board. Perhaps most important, the District did not question the appropriateness of the wall-to-wall classified unit in the initial unit determination hearing. Rather, it argued, with CSEA, that the wall-to-wall unit was appropriate. Thus, once the Teamsters fell by the wayside, the wall-to-wall unit faced no further opposition.

While the hearing officer's decision was rendered pursuant to the processes of the EERB, that initial unit determination was reached in an atmosphere of mutual accord between CSEA and the District and is thus entitled to less deference than if it were the result of fully developed litigation between the District and the employee organization.

It is noted that the petition herein was filed during the window period of the 1978-80 agreement. As a practical matter, that was the earliest opportunity any organization would have had to fully litigate the efficacy of this wall-to-wall unit following the Board's elucidation of its presumption favoring Sweetwater units. It would be incongruous if we were to now decide that the relatively brief and somewhat unstable course

⁶Livermore Valley Joint Unified School District (8/10/77) EERB Decision No. HO-R-23 [I PERC 354].

of negotiating herein must take precedence over the other statutory factors (community of interest, efficiency of operations, and extent of organization) which militate in favor of the operations-support services unit petitioned for herein.⁷

To so hold would be tantamount to an expression that the policy favoring the Sweetwater unit configuration is to be applied only in new unit determinations occurring after the elucidation of that policy and that in districts in which some given period of negotiating has gone before, the presumption is magically rebutted thereby. Given the large number of districts wherein wall-to-wall classified units were established in the absence of consideration of the Sweetwater-Compton presumption and preference, such a holding would render that preference a rule of extremely limited

⁷CSEA urges that this Board rely on Buckeye Village Market, Inc. (1969) 175 NLRB 271 [70 LRRM 1529] for the proposition that bargaining for 22 months in a wall-to-wall unit is determinative of the unit question. In that case, the NLRB relied on a 22-month bargaining history in combination with evidence that employees in the unit sought for severance were functionally indistinguishable from other employees, that they interfaced with and handled and sold the products produced by other employees, and that they shared common supervision with other employees. The NLRB did not, by this case or any other, hold that the mere existence of a 22-month bargaining rendered inquiry into other unit determination factors unnecessary. Where other factors militate in favor of severance, the NLRB will grant it in the face of a long-term bargaining history. See Wright City Display Manufacturing Company (1970) 183 NLRB 881 [74 LRRM 1360] (8 year history), Safeway Stores, Incorporated (1969) 178 NLRB 412 [72 LRRM 1133] (7 year history).

application. Such a rigid and mechanistic holding would be inconsistent with the Board's strong preference for the Sweetwater unit configuration.

This is not to say that, in a different factual setting, the existence of a long and stable negotiating relationship in combination with the existence of other statutory unit determination indicia would not tip the balance in favor of a wall-to-wall classified unit. Rather, we hold only that where, as here, the community of interest factors strongly favor the petitioned-for unit, the length of the negotiating history is relatively short, and the evidence shows disparate interests of unit members, and the overwhelming majority of employees in the petitioned-for unit do not desire to be represented by the incumbent organization, the District and CSEA have failed to rebut the presumption favoring an operations-support services unit.

The NLRB Test

We note that the National Labor Relations Board (hereafter NLRB) employs a six-pronged test as to the appropriateness of severance. As set forth in Mallinckrodt Chemical Works (1969) 162 NLRB 387 [64 LRRM 1011], the areas of inquiry deemed relevant by the NLRB are as follows:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees

constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.

2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.

3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern or representation and the prior opportunities, if any, afforded them to obtain separate representation.

4. The history and pattern of collective bargaining in the industry involved.

5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.

6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

It should be noted that the NLRB inquiry as to severance is conducted in a different conceptual setting than that facing us and thus some of the factors employed by that agency are not relevant to our inquiry. NLRB severance cases generally

concern the carving out of a traditional craft or homogeneous departmental grouping from a broader production-and-maintenance unit. A typical case is Kalamazoo Paper Box Corp. (1962) 106 NLRB 134 [49 LRRM 1715]. In that case, the petitioner sought to sever a unit of truck drivers from an existing production-and-maintenance unit. This is far different from the question presented by the instant case, to wit, whether to carve out a unit of blue collar workers from a wall-to-wall unit which includes office clericals, technical employees, and paraprofessionals who would seldom, if ever, be included together in an NLRB-established unit.

In the NLRB setting, severance petitions have rarely been granted in recent years because they generally seek to carve out an anomalous sub-unit from the long-established, traditional, preferred broad production-and-maintenance unit. The instant petition is far different, for it seeks to carve the preferred production-and-maintenance unit out of the disfavored, overly-inclusive wall-to-wall unit. Thus, while analogies may be drawn from the Mallinckrodt factors to those relied upon by us in the instant case, ultimate reliance on that inquiry would be inappropriate for the factual setting and conceptual problems presented herein are far different from those considered by the NLRB.

Because the instant petition seeks to carve out a broad production and maintenance unit from a wall-to-wall unit, it

would be incongruous to inquire whether such a broad grouping has maintained a separate identity, or whether its function is necessary to the smooth operation of a production grouping, as does the NLRB. Those queries are uniquely suited to the craft severance situation and inapplicable to our own.

Analogizing to the remaining Mallinckrodt factors, the blue collar unit sought here is functionally distinct from the rest of the wall-to-wall unit. The history and pattern of collective negotiating and case law development in classified employee units strongly militates in favor of the operations-support services unit sought here.

Upon consideration of the facts of the instant case in light of the relevant Mallinckrodt criteria, we are further persuaded that this unit is appropriate for severance.

SEIU Exceptions: Maintenance Specialist and
Transportation Specialist

SEIU excepts to the failure of the hearing officer to include the maintenance specialist and the transportation specialist in the operations-support services unit. It appears from the record that employees in these classifications perform administrative and clerical functions for the transportation and maintenance departments, respectively. The transportation specialist works in the transportation yard and performs scheduling, ordering of supplies, filing, recordkeeping, and bookkeeping solely related to the workings of the

transportation department. The transportation specialist shares common supervision with the transportation employees and apparently interfaces almost exclusively with the transportation department personnel. The above factors are also present with respect to the maintenance specialist's relationship to the maintenance department as far as work location, job function, common supervision, and interface are concerned.

Where clerical employees share work location and supervision with the production employees they serve, where they share similar working conditions, and where their work is intimately related to that of the production and/or maintenance employees they serve, such clerical employees are generally regarded as plant clericals and not office clericals under National Labor Relations Board precedent⁸ and are included in the production and maintenance unit. They are commonly held to be differentiated from office clericals by virtue of their separate location and supervision.

Here, the only factor in the record which tends to indicate that the specialists share a community of interest with office clericals is the common possession and exercise of clerical skills.

⁸Sears, Roebuck & Co. (1976) 222 NLRB 476 [91 LRRM 1232].

Based upon the community of interest indicia set forth above, and the absence of any countervailing considerations regarding the other section 3545 criteria, we find that the transportation specialist and the maintenance specialist herein are akin to plant, not office, clericals, and thus will include them in the operations-support services unit.

ORDER

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

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

Bus driver, bus driver trainer, cafeteria assistants I and II, carpenter, carpenter foreman, cashier, custodians I and II, electrician, electrician assistant, electrician foreman, grounds equipment mechanic, grounds equipment operator, groundskeepers I and II, head custodians I and II, maintenance specialist, maintenance workers I and II, office machine repairer, office machine technician, painter, painter foreman, printer, printer foreman, plumber, sprinkler repairer, transportation mechanics I and II, transportation shop foreman, transportation specialist, utility maintenance worker, van driver, warehouse foreman, and warehouse workers I and II, and excluding all other classified employees and all management, supervisory, and confidential employees.

2. The employee organizations whose names shall appear on the ballot are California School Employees Association and its Chapter 334 and United Public Employees, Local 390, Service

Employees International Union, AFL-CIO, unless one of said organizations informs the regional director in writing, within 15 workdays after the employer posts the Notice of Decision, that it does not desire to participate in the election. The regional director shall conduct an election at the end of the posting period in such unit if: (1) both of the above-named employee organizations desire to participate in the election, or (2) only one organization desires to participate and the employer does not grant voluntary recognition.

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.

By: Barbara D. Moore, Member

Irene Tovar, Member

Chairperson Gluck's dissent begins on page 22.

Chairperson Gluck dissenting:

Unquestionably, PERB has consistently, though not without exception, determined that where two or more units are appropriate preference will be given to a Sweetwater unit.¹ However, in each instance that preference was exercised in the course of initial unit determination where no previously Board-established units were involved.

This is not the case here. The wall-to-wall unit from which the majority now amputates a portion was established pursuant to a full evidentiary hearing. While the Board itself did not make that determination, no appeal from the hearing officer's decision having been taken, the unit clearly has PERB's official sanction.² That no exception was taken to the hearing officer's decision is no ground for minimizing the validity of that determination as the majority seems to do. In short, the wall-to-wall unit was found to be appropriate.

¹The Sweetwater configuration was not followed in Foothill-DeAnza Community College District (3/1/77), EERB Decision No. 10; Sacramento City Unified School District (9/20/77) EERB Decision No. 30; Fallbrook Union High School District (12/4/78) PERB Decision No. 78; Compton Unified School District (10/26/79) PERB Decision No. 109.

²PERB rule 32305:

Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.

PERB rules are contained in California Administrative Code, title 8, section 31000 et seq.

Thus, the present case represents, in principle, a contest between a unit actually found to be appropriate by this Board and one which only may be appropriate, for I do not see that the Sweetwater presumption necessarily survives the intervening negotiating history.³ Despite the Board's preference for the so-called Sweetwater units it was never decided that those units be regarded with iconic inviolability. Thus, in my view, the majority errs in relieving petitioner of the burden of justifying the severance and placing the obligation on the incumbent and the District of proving that the established unit should not be dismantled.⁴

³The majority acknowledges, at p. 7, fn. 4, that changes in community of interest have resulted from the intervening negotiating period but finds them insufficient to overcome their preference. We are not informed as to how much more appropriate an established appropriate unit must be to resist severance. See La-Z-Boy Chair, (1978) 235 NLRB 77 [97 LRRM 1490] and International Foundation of Employee Benefit Plans (1978) 234 NLRB 277 [97 LRRM 1144] where conditions created by bargaining agreements were considered in determining the appropriateness of severance requests.

⁴Great Atlantic & Pacific Tea Co. (1965) 153 NLRB 1549 [59 LRRM 1679]

. . . the Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances.

See also West Virginia Pulp & Paper Co. (1965) 122 NLRB 738, fn. 12; Potomac Electric Power Co. (1958) 111 NLRB 553, 557-8 [35 LRRM 1527].

It is a fundamental purpose of unit determination and exclusive representation to provide an orderly and systematic means of dealing with disputes between employers and employees. Such a system cannot thrive in a volatile atmosphere where the unit framework is fragile, employee representatives are denied some degree of security of tenure and the negotiating relationship lacks reasonable continuity. While no unit need be set in concrete and no representative should be immune from challenge, stability of employer/employee relations is a basic thrust of the collective negotiations system. The disruption of an established relationship should be justified by more than "presumptions" or "preferences" held by this Board.

I believe the majority further misunderstands the very concept of a presumption of appropriateness. Once a proposed unit has been found to be appropriate all such units are presumably appropriate,⁵ though they may not necessarily find Board approval in the face of competition with other appropriate units. The majority apparently considers only the Sweetwater units to be presumptively appropriate.

Moreover, it appears that the majority further confuses the terms "presumptively appropriate" and "preferred," using them

⁵This presumption is based on the established principle that cases involving similar facts should be decided in similar fashion.

as virtually synonymous. The Board's historic preference is, of course, necessarily between two or more units each of which has been found to be appropriate, presumptively or otherwise.

The result of this confusion is the majority's erroneous view that the wall-to-wall unit must yield to the unit which is the only presumptively appropriate one and which is therefore not only preferred, but virtually required.

The majority seems to acknowledge that there should be other justification for severance. Mallinckrodt, supra, and Kalamazoo, supra, are brought into the majority's discussion, but little more than lip service is paid to the principles those cases represent.⁶ Thus, the majority finds that there was widespread dissatisfaction among blue-collar workers. Proof of such dissatisfaction is one incident involving a group of blue-collar workers who failed to obtain a desired classification upgrade while others in the unit did. But universal satisfaction with the results of negotiations is, at best, a rarity and even

. . . assuming the appropriateness of the unit requested, a minority of employees cannot proffer their dissatisfaction with a contract executed by their representative as the sole basis for severance from the established unit (Standard Oil Co. of California (1974) 211 NLRB 67 [86 LRRM 1337]).

⁶Indeed, the majority concludes that reliance on these cases would be inappropriate, p. 17.

Admittedly, the severance petition was supported by a substantial majority of the blue-collar workers. While employee preference may be given some weight in considering such a petition, it should not be the controlling factor in disrupting established units. To defer too readily to the sometimes inconstant expression of employee preference would permit "window shopping" for both units and representatives and lead inevitably to the destabilization of labor relations in the school system.

The fact is that there exists a three-year bargaining history which may have produced stable labor relations.⁷ Blue-collar employees frequently served on the incumbent's negotiating teams and served as chapter officers.⁸ There was no evidence that the incumbent failed to represent these employees adequately, ignored their special interests, or that the incumbent was otherwise unable to engage in meaningful collective bargaining because of "defects" in the unit

⁷Buckeye Village Market, Inc., (1969) 175 NLRB 271, 272 [70 LRRM 1529]

The Board has long held that a 22-month bargaining history is substantial, if not controlling, in determining the appropriate unit.

See also Owens-Illinois Glass (1954) 108 NLRB 947, 950 [34 LRRM 1114].

⁸See International Foundation, *supra*, where participation on the negotiating team was a factor militating against severance.

configuration. In short, neither the petitioner nor the majority has offered a cogent reason why the established unit should be destroyed.

Finally, as the majority itself points out, there is a widespread pattern of wall-to-wall units throughout the State's school system, all of which may be affected by this decision. The disruption of these established bargaining relationships for no better reason than that expressed by the majority here raises the concern that employer/employee relations in California public schools may be built on shifting sands and Board determinations written in the wind.⁹

Since the hearing officer also relied solely on a preference for the presumptive Sweetwater unit and may therefore have considered the matter of the burden of going forward and of proof accordingly, I would remand for a hearing on the appropriateness of the petitioned-for unit in accordance with the principles established in Kalamazoo.

Harry Gluck, Chairperson

⁹The majority's disclaimer, p. 15, that its approach here is not necessarily indicative of its future actions in severance cases leaves one wondering what distinctions it will rely upon and justifiably uneasy as to the future of established relationships. More informative is the majority's concern that the Sweetwater presumption and Board preference not be too limited in application, pp. 14-15.

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Before Terrell J. Lindsey, Hearing Officer.

PROCEDURAL HISTORY

On March 27, 1980, the United Public Employees, Local 390,
Service Employees International Union, AFL-CIO (hereafter Local
390 or UPE) filed a request for recognition seeking to sever a
maintenance, operations and food services unit from an existing

wall-to-wall classified unit of employees of the Livermore Valley Joint Unified School District (hereafter District).

The San Francisco Regional Office of the Public Employment Relations Board in a letter dated April 2, 1980, outlined the obligations for the District and the incumbent exclusive representative, the California School Employees Association (hereafter CSEA), in accordance with the rules and regulations of the Public Employment Relations Board (hereafter Board or PERB).¹

In a letter dated April 10, 1980, CSEA stated its opposition to the formation of a maintenance and operations unit and buttressed their position with a 1977 PERB hearing officer decision² which had initially established the existing wall-to-wall classified unit despite a challenge for a separate transportation unit.

An administrative determination by the San Francisco Regional Office dated April 18, 1980, established that the request for recognition was timely and supported by the required proof of support and therefore a question of representation was deemed to exist.

¹California Administrative Code, title 8, section 33050 et seq.

²EERB Decision No. HO-R-23, Case No. SF-R-28, SF-R-77, (July 29, 1977).

CSEA further contested the petition filed by Local 390 on different grounds by questioning in an April 25, 1980 letter whether Local 390 had the requisite showing of support in the established unit not in the petitioned for unit as is required by the Board's rules and regulations.³ Additionally, CSEA sought clarification of PERB rules and regulations pertaining to the filing of requests for recognition and decertification petitions in an appropriate unit.

On April 28, 1980, the District outlined its opposition to the unit sought by Local 390 maintaining a "comprehensive unit would be more efficient and result in less conflicts."

On June 16, 1980, the San Francisco Regional Director outlined to CSEA the procedure by which an outside employee organization may carve out or sever a proposed unit from an existing bargaining unit by filing a request for recognition.

As a result of the challenges to the appropriateness of the unit sought by UPE, by CSEA and the District, a formal hearing was scheduled and held on June 17, 1980, at the Livermore Valley Joint Unified School District, Board Room, Livermore, California.

At the hearing CSEA made a motion to dismiss the UPE petition. The hearing officer ruled to take CSEA's motion

³See California Administrative Code, title 8, section 33240.

under submission for the purpose of ruling on the motion in this proposed decision.

FINDINGS OF FACT

The case files of the San Francisco Regional Office of the PERB show that CSEA filed a request for recognition on April 1, 1976, for a wall-to-wall unit of classified employees. Also on April 1, 1976, Teamsters Local 853 filed a request for recognition for a unit of bus driver and mechanics. A formal unit determination hearing was held on September 27, 1976.⁴ The hearing officer in the case determined that a wall-to-wall classified unit was appropriate for bargaining. The hearing officer's decision was not appealed. CSEA was certified as the exclusive representative on October 4, 1977.

The Livermore Valley Joint Unified School District employs approximately 440 classified employees. Members of the classified staff work at all the work sites and schools of the District. However, there are specific permanent work sites for some classified employees while others are assigned to a particular work site but travel throughout the District to accomplish their tasks.

⁴An administrative tribunal may take official notice of information on its own files. See California Administrative Agency Practice (1970) at p. 167, citing Broyles v. Mahon (1925) 72 Cal.App. 484, 491 [237 p. 763] and Anderson v. Board of Dental Examiners (1915) 27 Cal.App. 336, 338 [149 p. 1006]. Also see NLRB v. Seven-Up Bottling Co. (1953) 344 U.S. 344, 348.

Work Locations

The district office is the work site for all levels of account clerks, the administrative, executive and personnel secretaries, attendance accounting specialist, cashier, child welfare and attendance aide, elementary state and federal program clerk, clerk typist, coordinator of volunteers, computer operator, community services secretary, food services account clerk, head custodian II, instructional materials assistant, library technician II, mail clerk, personnel substitute specialist, printer and printer foreman, purchasing assistant and purchasing clerk, receptionist-PBX, senior clerk, van driver, warehouse worker and foreman, and data entry clerk.

Persons employed at the District's high schools have the following classifications: attendance clerk, cafeteria assistant, clerk-typist, head custodian II, instructional aide II, library technician II, principal's secretary, receptionist-PBX, records clerk, scheduling technician, school secretary, senior clerk, van driver, and career information technician.

The following job classifications are all assigned to the maintenance work site: carpenter, carpenter foreman, electrician, grounds equipment mechanic, grounds equipment operator, grounds keeper, health clerk, maintenance specialist, maintenance worker, office machine repairer, office machine technician, painter, painter foreman, plumber, sprinkler

repairer, transportation mechanic and utility maintenance worker.

Persons holding the jobs of bus driver, bus driver trainer, custodians I and II, transportation shop foreman and transportation specialist are housed at the transportation yard. The maintenance shop and transportation yard are approximately two miles from the District office.

Persons occupying the jobs of cafeteria assistant, counseling technician, head custodian, instructional aide, principal's secretary and van driver are employed at the District's middle schools.

Employees in the classifications of cafeteria assistant, clerk-typist, community liason worker, head custodian, instructional aide, library technician, principal's secretary and van driver work in the elementary schools.

The District employs a clerk-typist at the American Indian Education Center.

The District employs an adult education secretary and custodian at the Adult Education Center.

Job Duties

The maintenance and transportation specialists are essentially clerical employees who answer phones, do typing, filing and schedule work for the employees at their work sites.

The transportation yard is also the work site for the bus driver trainer. The record shows this person is responsible for training bus drivers. The driver trainer also maintains records in conjunction with her bus training work. When the District needs a substitute bus driver, the bus driver trainer may drive a bus. However, the driver trainer is principally charged with training bus drivers and ensuring that the drivers are in compliance with safety procedures and the District's transportation policies.

The evidence establishes that custodians are not involved in clerical or instructional aide responsibilities of any substance. In some circumstances vandalism reports are filled out by custodians along with other paper handling tasks, such as keeping their own time sheets. The duties of the custodians involve the use of floor waxes, soap, cleansers, mops and broom, all of which go toward maintaining the physical environment of the District.

The food services operation involves several bargaining unit jobs, among them are the cashiers, cafeteria assistants, food services account clerk and the van drivers. The cafeteria assistants are directly involved in cooking food, washing dishes, and cleaning the kitchens and lunch rooms where the meals are prepared and served. The van drivers deliver food from the District's main kitchens, where the food is prepared, to the schools where the food is served. Van drivers move

throughout the District, although they are based at the District office.

The cashiers receive payment for the meals bought from the cafeteria program at the schools and maintain records of those transactions. The food services account clerk is housed in the District office and coordinates the receipts from the food services operation. The position has a bookkeeping role and not any culinary obligations.

The warehouse workers and foreman are located at the District office work site. Their jobs involve physical labor and some mail delivery. The District's supplies are maintained at the warehouse and the workers there lift boxes, keep inventory, load trucks with supplies and deliver them where needed.

The printing operation employees are also at the District office. Printers' duties consist solely of meeting all the District's printing needs.

Employees at the maintenance yard are responsible for maintaining the District's physical environment. Located at a separate work site, these employees receive work assignments from the schools needing repairs. As was discussed earlier, the maintenance specialist, though housed at the maintenance yard, does essentially clerical tasks in support of the maintenance employees.

Supervision and Evaluation of Classified Staff

Custodial employees at both the high schools and elementary schools are supervised and evaluated by the head custodians at those schools. The head custodians are also the first step in the grievance procedure for custodians. The school principals participate in custodian evaluations by signing off on the evaluation. The principals are the immediate supervisors and evaluators of the head custodians in the schools. By comparison, school principals also sign the evaluations of instructional aides who are basically supervised and evaluated by teachers. Classified staff immediately supervised and evaluated by school principals would include those working in a school office. These employees would include jobs such as the principal's secretary, attendance clerk, and counseling technician. All school principals report to the assistant superintendent, educational services.

Still there are other custodial staff working at the maintenance yard and the District office. These employees are supervised and evaluated by the custodial supervisor who works in the District office. The custodial supervisor at the District office has no supervisory authority over school site custodians. The District office custodial supervisor reports to the director of facilities management who is a management employee.

The directors of facilities management, food services and purchasing are the persons to whom most of the classified staff sought by UPE in its proposed "maintenance, operations and food services" report.

The director of facilities management reports to the assistant superintendent for business services. The transportation director is responsible to the director of facilities management. The transportation director supervises the driver trainer, transportation mechanic, bus drivers and the transportation specialist.

The maintenance director is supervised by the director of facilities management. The maintenance specialist, grounds equipment operator, carpenters, printers, electricians, groundskeepers, office maintenance technician, and maintenance personnel are all supervised and evaluated by the maintenance director.

The director of facilities management also supervises two clerical positions, an executive secretary and a community services secretary, and both positions are in the existing bargaining unit.

The food services director is the supervisor for all employment classifications working in the food services operation. The jobs include the cafeteria assistants, who report directly to cafeteria supervisors, the van drivers, food services account clerk, and cashiers. A clerical employee, a

clerk typist II, is also in the food services operation and thereby accountable to the food services director.

The purchasing director oversees several job classifications among the classified staff. The purchasing director is responsible for supervising the warehouse workers and printers. Additionally, purchasing clerks, a clerk typist, the record and property control technician, and mail clerk are supervised by the purchasing director. These employees are not involved in the warehouse and printing work done by the warehouse workers and printers but rather perform clerical or paper handling duties.

The directors of personnel, fiscal services, pupil services and instructional services are comparable in their areas of supervision with the directors of facilities management, food services and purchasing. However, the supervisory authority held by each director is independent from the other.

The director of fiscal services is a management employee. The accounting and data processing operations within the District are his sole area of responsibility. The account clerks report to the payroll supervisor and the accounting supervisor who both report to the chief accountant. The chief accountant is supervised by the director of fiscal services. The computer machine operators are supervised by the data processing director who reports to the director of fiscal services. The director of fiscal services is not accountable

for supervising any other classified personnel. Like the director of facilities management, the director of fiscal services reports to the assistant superintendent, business services.

The director of personnel, who reports directly to the superintendent, is the sole supervisor of the personnel operation. His supervisory role is limited to the personnel secretaries, two clerks, the receptionist/PBX, the personnel substitute specialist and a confidential executive secretary.

The District's educational services and certificated staff supervisors report to the assistant superintendent, educational services. The classified staff in this part of the District's organizational structure provide clerical support to the educational programs offered by the District.

Bargaining unit positions found within educational services would include the job titles: administrative secretary, clerk, aide, clerk typist, secretary, instructional materials assistant, coordinator of volunteers, community liaison worker, and the scheduling, counseling, career information and library technicians. These people are supervised and evaluated by school principals, educational program directors, nurses, psychologists and other certificated employees. Most certificated supervisory employees report to the directors of instructional services and pupil services except for school

principals who report directly to the assistant superintendent, educational services.

None of the classified employee supervision and evaluation practices flow outside the major employee groupings of the District's organization as is provided in these findings.

Established Practices

Mr. John Waggoner is the director of personnel in the District. In his testimony Mr. Waggoner described and explained many of the District's employment practices. Many employment policies are contained in personnel documents such as the Classified Employee Handbook. The handbook was adopted on January 6, 1976 by the District's Board of Education. This document outlined many employment conditions which were superseded by a collective bargaining agreement between the District and CSEA which became effective from July 1, 1977 to June 30, 1978. Still portions of the Classified Employee Handbook remain in effect, including policies such as the probationary period, classifications of employees and positions, employment rules, service education, disciplinary action, termination of employment, and job descriptions. All classified employees in the District are covered by these portions of the handbook.

The District maintains yearly work calendars for those classified employees paid by the month or hour. The hourly paid employees include instructional aides, library technician,

health clerks, bus drivers, cafeteria assistants and child welfare and attendance aides. The hourly calendar shows paid and nonpaid holidays and that hourly employees are employed for 176 workdays. The other classified staff are paid on a monthly basis and work year around. Additionally, the monthly calendar contains vacation and leave procedures not found on the hourly calendar.

Superintendent Leo Croce testified that Dr. Bardellini, the previous assistant superintendent for instruction, led the District negotiations for the certificated and classified units. Mr. Walt Capri has replaced Dr. Bardellini as the head of the District's negotiation team. However, the testimony reflected Dr. Bardellini's negotiating efforts. These efforts involved participating in caucuses, meeting with school board members, coordinating management information and he was the District spokesman at the bargaining table. Mr. Croce indicated that Dr. Bardellini spent "a great deal of time away from the instructional program." The assistant superintendent for instruction supervises the directors of instructional services and pupil services, and all the District's principals.

The management negotiating team is composed of the assistant superintendents for educational services and business, the personnel director, two principals (elementary and secondary), and the maintenance and operations director. The maintenance and operations director is not a member of the

certificated bargaining team, but with the assistant superintendent for business services provides the major input to the team for classified concerns.

Mr. Waggoner said that bargaining sessions with CSEA typically began in February and lasted until August. Bargaining sessions occurred two or three times a month and were about three hours in length. His estimate was that fewer sessions occurred outside the workday.

The management team is supported by staff at the District office during negotiations. All the confidential secretaries are involved in typing and the printing department employees have responsibilities for printing negotiations materials. Budget work or computations occur so that the "total business office" is sometimes needed, explained Mr. Waggoner. This level of staff involvement, he offered, is a hardship for the District because office staff was reduced due to budgetary limitations and reduced student attendance. Mr. Waggoner has been on the management team since the inception of the Educational Employment Relations Act (hereafter EERA) and in his opinion another bargaining unit in the District would double the staff required to effectively bargain. However, Mr. Waggoner said that he had no experience in bargaining with a second classified unit.

The roster of offices for the Livermore Chapter of CSEA has been composed of individuals with varied job titles. During

the 1978 roster year the chapter officers were employed as a principal's secretary, head custodian, secretary, instructional aide and a maintenance specialist. In 1979 a principal's secretary, PBX operator and head custodian were the chapter officers. For 1980 an attendance clerk, PBX operator, secretary and head custodian were the chapter officers.

The chapter officers are nominated by members of CSEA by use of a nominating form sent out by the nominating committee. Any person in any classification may run for office in CSEA.

CSEA has work site representatives around the District. These individuals disseminate information. They also may handle the first step of a grievance for an employee at a work site. However, the record shows the primary function of the site representative as a "contact person." A site representative is at every school, the district office and the transportation and maintenance sites.

The negotiating teams for CSEA also show distinctions in job titles among their memberships. The CSEA negotiating team that negotiated the 1977-1978 contract had a head custodian, principal's secretary, purchasing clerk and a transportation employee as the members. During the negotiations for the 1978-1980 contract the CSEA team contained a head custodian, PBX operator, principal's secretary, a maintenance employee and a transportation employee.

CSEA Chapter President Betty Cleveland testified that the District and CSEA felt it necessary to set up a special committee to address the needs of the transportation employees. Ms. Cleveland indicated she was not too familiar with transportation employee concerns but stated that the need for a seniority measure to determine bus run assignments for drivers was among the problems in transportation. The committee to address these concerns was composed of Ms. Cleveland, CSEA field representative Betty Boykin and the directors of personnel, transportation and facilities maintenance. Transportation employees' concerns were developed into proposal form, reviewed by the employees themselves and the final product was incorporated into the CSEA negotiations for the 1978-1980 contract.

Ms. Cleveland also pointed out that she had processed grievances for custodians, aides, cafeteria employees, clerical and transportation workers.

Chapter President Betty Cleveland testified that night custodians were provided with a special meeting. The District employs approximately 24 night custodians. The record does not indicate what percentage of all custodians work at night. Ms. Cleveland and Mr. Spivey, the bargaining team spokesman, did meet with the night custodians because these employees' work hours conflicted with the time scheduled for the regular CSEA unit meetings. The meeting then occurred after 11:00 p.m.

so that the night custodians would not miss any working hours. Indeed, the 1978-1980 contract provides that meetings with employees occur during nonworking periods.

The District and CSEA have negotiated a dues check-off system for those unit employees who are members of CSEA. At the time of the hearing there were 146 employees paying dues through the check-off system out of approximately 440 unit members. This CSEA membership is spread throughout the District in the following fashion: 45 members among the clerical or secretarial functions, 40 instructional aides and paraprofessionals, 6 within food services, 9 in transportation, 27 custodians, 6 in maintenance and 3 warehouse employees.

CSEA and the District have negotiated contracts for the years 1976-78 and 1978-80. Those contracts cover all classified employees in the bargaining unit. The 1978-80 contract has a separate section covering the particular concerns of bus drivers. The contract does not contain the calendars for monthly and hourly paid employees that were mentioned earlier. Then too, the layoff procedure is separate from the contract yet does cover all classified bargaining unit members.

ISSUES

1. Whether the petition by UPE was improperly filed under the rules and regulations of the PERB.

2. Whether a maintenance, operations and food services unit should be severed from the established bargaining unit.

CONCLUSIONS OF LAW

The motion by CSEA to dismiss the UPE petition and this hearing is denied. The San Francisco Regional Director determined the validity of the UPE petition after a review of sections 3544 and 3544.7(b)(1).⁵ The hearing officer has no authority to review the decision of the regional director in this case.⁶ Any further procedural ruling on this issue may only be made by appeal to the PERB itself.

⁵Section 3544 reads in part:

An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organizations... (Emphasis added.)

Section 3544.7(b)(1) provides:

(b) No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organizatio covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement... (emphasis added).

⁶California Administrative Code, title 8, section 32350, et seq.

The hearing officer acknowledges that the established comprehensive classified unit was created by a decision of a PERB hearing officer. This decision was a proposed decision with appeal rights to the PERB itself. The decision was not appealed. Unless appealed to the PERB itself, the proposed decision of a PERB hearing officer is only binding on the parties in that particular case and not binding on other parties or precedent setting for future cases.

Government Code section 3545 provides in part:

(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

In Antioch Unified School District (November 7, 1977) EERB No. 37, the Board instructed that "the unit determination criteria in Government Code Section 3545 require a weighing and balancing in respect to each other in order to achieve consistency of application" The Board had decided in earlier cases⁷ to give little weight to the established

⁷Sweetwater Union High School District (November 23, 1976) EERB Decision No. 4. See Freemont Unified School District (December 16, 1976) EERB Decision No. 6; San Diego Unified School District (February 18, 1977) EERB Decision No. 8.

practices criteria in comparison to the community of interest factor. Yet in Antioch the Board said that in future unit determination cases a greater reliance may be placed on the negotiating history under the Educational Employment Relations Act. The Board did not, however, indicate when established practices under EERA would be as equally compelling as community of interest factors. Yet in its post-hearing brief CSEA maintains that this case provides the perfect test for equally weighing each unit determination criteria in Government Code section 3545. While the hearing officer is prepared to utilize all unit determination criteria in this proposed decision, it is found that the length of bargaining history in this particular case is not determinative.

The maintenance and operations unit sought by Local 390 is in accord with the Board's "presumptively appropriate" operations and support unit found in Sweetwater.⁸ In utilizing the community of interest guidelines in Sweetwater when reviewing the record in this case it is concluded that a successful argument is made that the maintenance, operations and food services employees have a separate community of interest from other classified employees in the District.

The employees in the proposed unit are all grouped in an employment area headed by the assistant superintendent for

⁸Ibid

business services. Line supervision from the assistant superintendent for business services is to the directors of facilities management, food services, purchasing and fiscal services. None of the employees working under the director of fiscal services are sought by Local 390. None of the fiscal services employees share common supervision with the employees sought by Local 390 whose supervision flows through the other classified managers. Though there was testimony that school principals share supervision with custodial supervisors in evaluating custodians as principals do in shared evaluation of aides with teachers, no evidence was offered to show that school principals are actively involved in custodian job performance review but merely that they sign-off on evaluations in their role as the school site administrator.

With respect to work location, maintenance and transportation employees work out of the maintenance yard and transportation area which are separate from all other work sites. Cafeteria employees do their jobs in the District's kitchens. Custodial employees are not assigned to a desk or office but work all over the District's various work sites. Van drivers are also all over the District delivering food to the school cafeterias.

Critical to the community of interest criteria in unit determinations is establishing the functions of the employees at issue. Clearly the employees in the "maintenance and

operations unit" sought by Local 390 are functionally related in that they work with their hands and tools in maintaining a proper physical environment in the District.

There are three classifications that by job title and work location would appear to have a community of interest with maintenance and transportation employees. Both the maintenance and transportation specialists perform clerical and record keeping functions and do not do maintenance work or drive buses, and as such, do not have a community of interest with maintenance and transportation employees.

However, the bus driver trainer's work is intricately involved with the training and performance of bus drivers and the buses themselves. In this regard the bus driver trainer rides buses, inspects bus routes and seeks compliance with vehicle regulations that the District bus transportation operation must meet. This classification would also work as a substitute bus driver if the need occurred. The bus driver trainer shares the interests of the bus drivers.

Additionally, the food services operation employs cashiers and a food services account clerk whose community of interest with food service employees may seem unclear. Cashiers work in the cafeteria, all supervised by the food service director and are an integral link in the food service operation. Though collecting money for meals is the function of the cashier, this one interest factor is outweighed by others. The record

supports a determination that the cashier's interests are with food service employees.

The food service account clerk has minimal interests with other food service people. The position is located at the District office and works in an office atmosphere. Considerable bookkeeping is the primary responsibility since the position coordinates the receipts from the food service system. The food services' account clerk is functionally similar to the other accounting employees at the District office and therefore it is found that the food services' account clerk lacks a community of interest with other food service employees.

Established Practices

Apart from the community of interest criteria in determining the appropriateness of bargaining units, section 3545(a) also instructs the use of:

. . . established practices including, among other things, the extent to which . . . employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

The PERB discussed at length in Compton Unified School District (October 26, 1979) PERB No. 109, "...that when an employee organization seeks a Sweetwater unit the unit determination criteria set forth in section 3545(a) are met." In Compton the Board instructed that those seeking a variant

unit to a presumptively appropriate Sweetwater unit incur a burden to establish "that a variant unit is more appropriate than a Sweetwater unit...." An examination of the record in this case shows that CSEA and the District did not rebut the Sweetwater presumption in seeking to maintain the existence of the established unit.

The District produced little evidence in support of its contention that a second unit would have a detrimental effect on efficiency of operations. The management bargaining effort was headed by Dr. Bardellini who has in the last year been replaced by Mr. Capri. The District's bargaining experience occurred mainly during Dr. Bardellini's tenure and no testimony was attributed to Mr. Capri's bargaining leadership. However, the director of personnel who has participated in all the classified bargaining sessions authorized under the EERA says he doesn't know what could happen to the efficiency of operation of the District with another classified bargaining unit since he has never had the experience.

Included within the established practices for classified employees are several matters for consideration, among them is the Classified Employee Handbook. This document does apply equally to all classified bargaining unit members but there is nothing in the handbook that denies its applicability to classified management, supervisory, and confidential employees too.

The importance of the extent of membership in CSEA among the approximately 150 maintenance, operation and food services employees is difficult to measure since only 56 are members. The significance is minimal indeed considering that these 56 CSEA members are part of a bargaining unit of at least 440 employees.

The record shows a mixture with regard to the participation of various job classifications being represented on the CSEA bargaining team over the years. This CSEA effort shows an attempt to have adequate input from all job groupings in the bargaining unit. Still, even with this approach it was necessary for CSEA and the District to establish a separate committee to ascertain the needs of the transportation employees so that their needs could be effectively addressed. Then too, the unique work hours of night custodians required a special or different effort by the CSEA leadership in order to establish communication so that adequate representation could be accomplished. The necessity of having to organize a separate committee with a different composition of members more in line with understanding the transportation area goes to the heart of why interest factors weigh heavily in determining appropriate units.

The established practices of the parties also show that all classified employees are covered by the same contract and by a separately negotiated lay-off procedure. These two matters cannot be rebutted as valid and meaningfully established

practices under the EERA. Yet these matters are not equal⁹ in light of the many weighty factors evidenced in favor of determining the appropriateness of the maintenance, operations and food services unit sought by Local 390.

PROPOSED ORDER

Based upon the foregoing findings of fact, conclusions of law and the entire record of this matter, it is the proposed order that:

A maintenance, operations and food services unit is determined to be appropriate. The unit shall be composed of the following job titles:

Bus driver, bus driver trainer, cafeteria assistants I and II, carpenter, carpenter foreman, cashier, custodians I and II, electrician, electrician assistant, electrician foreman, grounds equipment mechanic, grounds equipment operator, groundskeepers I and II, head custodians I and II, maintenance workers I and II, office machine repairer, office machine technician, painter, painter foreman, printer, printer foreman, plumber, sprinkler repairer, transportation mechanics I and II, transportation shop foreman, utility maintenance worker, van driver, warehouse foreman, and warehouse workers I and II, and excluding all other classified employees and all management, supervisory, and confidential employees.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Order shall become final

⁹Compton Unified School District (October 26, 1979) PERB No. 109, p. 6.

on December 24, 1980 unless a party files a timely statement of exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief must actually be received by the Executive Assistant to the Board at the Headquarters Office in Sacramento before the close of business (5:00 p.m.) on December 24, 1980 in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, sections 32300 and 32305, as amended.

Within fifteen (15) workdays after the employer posts the Notice of Decision, each employee organization shall demonstrate to the Regional Director at least 30 percent support in the above 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) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition. See California Administrative Code, title 8, part III, sections 33450 and 33480.

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.

Date: December 4, 1980

Terrell J. Lindsey
Hearing Officer

