

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANTELOPE VALLEY COMMUNITY COLLEGE)	
DISTRICT,)	
)	Case No. LA-R-424
Employer,)	
)	
and)	PERB Decision No. 168
)	
CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION,)	
)	June 25, 1981
Employee Organization.)	
)	

Appearances: Patrick D. Sisneros Attorney (Wagner and Wagner) for Antelope Valley Community College District.

Before Gluck, Chairperson; Moore, Jaeger, and Tovar, Members.

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by the Antelope Valley Community College District (hereafter District) to the hearing officer's proposed decision finding the operations and support unit petitioned for by California School Employees Association (hereafter CSEA) to be appropriate and resolving the placement of several disputed classifications.

CSEA in its petition as amended requested recognition as the representative of a unit of approximately 30 to 33 out of a total of approximately 85 classified employees in the District,

including the following classifications: maintenance, grounds, custodial, storekeeper, security/operations worker, locker room attendant, science laboratory technician, tool room assistant, cafeteria assistants I and II.

The District disputes the appropriateness of the unit contending that it would have a detrimental effect on the efficient operations of the District to have to incur the cost of negotiating and administering an agreement for a unit of this size. Alternatively, the District argues that the unit is appropriate but that the positions of locker room attendant, tool room assistant, science laboratory technician, cafeteria assistants I and II, and security/operations worker should be excluded because they lack a community of interest with others in the proposed unit.

In her proposed decision, the hearing officer found the proposed operations and support unit to be appropriate, that the classifications of locker room attendant, cafeteria assistants, and security/operations worker were properly included in the unit but that the classifications of tool room assistant and science laboratory technician should be excluded.

The Board affirms the decision of the hearing officer except that it disagrees with the proposal to exclude the tool room assistant from the unit.

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.

In applying the precepts of section 3545(a) to classified employees units, the Board, at the outset, found an operations and support unit to be appropriate. See Sweetwater Union High School District (11/23/76) EERB Decision No. 4.² Since then, the Board has consistently granted such units and, indeed, has held that they are presumptively appropriate, imposing on the party disputing the unit the burden of rebutting that presumption. See Antioch Unified School District (11/7/77) EERB Decision No. 37 and cases cited therein.

Further, the Board has determined that operations and support services units are appropriate in small as well as

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

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

medium and large districts. See, for example, Fallbrook Union High School District (12/4/78) PERB Decision No. 78 (40 employees); Greenfield Union School District (10/25/77) EERB Decision No. 35 (74 employees).

In this case, since CSEA's proposed unit presumptively meets the section 3545 criteria, the burden was on the District to present evidence sufficient to rebut this presumption. The District conceded that, in terms of cost and efficiency, there was no basic difference in managing contract negotiations and administration for a unit of 10 employees compared with a unit of 100. It offered no proof that establishment of the unit (except for the claimed cost) would impair the efficiency of the District's operations. But, the fact that the District may incur certain costs in meeting and negotiating with the exclusive representative of employees in the unit does not, in and of itself, constitute an impairment of the efficient operations of the District.

The decision to require public school employers to meet and negotiate with their employees was made by the Legislature. That this obligation might entail some cost to the employer was undoubtedly considered by the Legislature when it balanced the right of employees to negotiate as a means of promoting "the improvement of personnel management and employer-employee relations within the public school system in the State of

California. . ."3 against the effect of unit configuration on operational efficiency. Therefore, while it is certainly appropriate for a district to raise cost implications in opposing a proposed unit, it would be contrary to EERA purposes to deny a unit solely on the grounds that the District would thereby incur additional costs.⁴

Although no party excepted to the exclusion of tool assistants from the unit, the Board reaches this issue sua sponte.⁵ The presumptively appropriate operations and support unit is comparable to units commonly referred to as "blue collar." The inclusion in a unit proposal of a classification which facially falls within this general employee category raises the presumption that the class is appropriately included. Exclusion of the classification must be affirmatively justified. To hold otherwise would reduce the

³EERA section 3540.

⁴PERB takes official notice that subsequent to the enactment of EERA, the Legislature authorized reimbursement of costs incurred by a public school employer in complying with the provisions of EERA. Chapter 102, Statutes of 1980.

⁵While a party's failure to except to a finding serves as a waiver of that party's right to except, it does not preclude the Board from reviewing unappealed matters. (Rio Hondo Community College District (1/25/79) PERB Decision No. 87 and Monterey Peninsula CCD (10/16/78) PERB Decision No. 76.) Although the Board has generally declined to consider matters to which no exceptions have been taken, it does so here for the reasons stated above.

meaning of presumptively appropriate to include only those units consisting exactly--no more, no less--of classifications already specifically approved by the Board.

Here, the hearing officer found as a matter of fact that the tool room assistants should be excluded from the proposed unit because they shared a community of interest with employees who would constitute a different appropriate unit. If the evidence rebutted the appropriateness of including the assistants in CSEA's proposed unit, they were properly excluded. If, however, the rebuttal evidence fell short of its mark, the presumption was not overcome and the exclusion was improper. We find the latter to be the case.

Tool room assistants work in technical education classes. Their duties and responsibilities include issuing and receiving tools from students, performing maintenance and repair work on electronic or automotive supplies and equipment, preparing mock-ups and displays for the classes, and performing custodial functions such as chemically cleaning the floors, filling soap and towel containers, emptying the trash, and other general maintenance and cleaning tasks. The job description does not indicate that tool room assistants are expected to instruct students and the one tool room assistant who testified stated that he had been specifically told that he should not instruct students and should remain in the tool room area while students were in the shop.

The technical expertise required of the tool room assistants, which they may obtain through experience or education, does not appear to differ substantially from that required of journeymen equipment maintenance workers. Like the latter, they maintain and repair various electrical and mechanical equipment and may, at times, work from schematic diagrams. Like locker room attendants, their contact with students is essentially confined to issuing and receiving the equipment needed for instruction. While tool room assistants have some job-related contact with maintenance employees, there is nothing in the record to indicate that they have such contact with classified employees outside of the proposed unit.

In conclusion, on the basis of their job functions and duties as well as their skills and qualifications, we find that, for the purposes of unit placement, the employees in this classification are not comparable to the technicians and paraprofessional employees the Board has placed in separate units in the community college system⁶ but do have a significant community of interest with other employees in the operations and support unit and are appropriately included therein.

⁶Marin Community College District (6/26/78) PERB Decision No. 55.

ORDER

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

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

Operations and support unit

Including: Custodian, groundskeeper, maintenance/operations worker, skilled maintenance worker, storekeeper, cafeteria assistant, locker room attendant, tool room assistant, and security/operations worker.

Excluding: All other employees and all management, supervisory, and confidential employees as defined by the Educational Employment Relations Act.

The employer shall post copies of the notice of decision pursuant to section 33450 of the Board's rules and regulations. Within ten workdays after the employer posts the notice of decision, the employee organization shall demonstrate to the Los Angeles regional director of the Public Employment Relations Board at least 30 percent support in the above unit.

The regional director shall conduct an election at the end of the posting period if an employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

The date used to establish the voting eligibility of employees in the unit and the number of employees in the unit

for the purpose of calculating the required proof of support 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.

In the event that an election is directed, it shall be held on the District's premises.

By: ~~Harry~~ Gluck, Chairperson

~~John~~ Jaeger, Member

Irene Tovar, Member, concurring:

I join in the conclusions reached by my colleagues and in all aspects of the opinion except two. These concern the reason for reaching the issue of unit placement of the tool room assistants, and the reason for placing employees in this classification in the operations and support services unit.

It is my position that PERB should reach unappealed hearing officer's determinations only under limited circumstances:

1) when the determinations are contrary to the EERA or established PERB policies, 2) when determinations are the result of a misapplication of PERB precedent, or 3) when determinations result in a miscarriage of justice. Unless so limited, review by PERB of matters no longer in contention by

the parties could have several negative effects. It will tend to discourage parties from settling matters on the basis of the proposed decision. It will pressure parties into writing longer appeal briefs. It will impair PERB efficiency by requiring review of all aspects of proposed decisions, regardless of what is appealed.

In this case, it is necessary for PERB to decide the unit placement of the tool room assistants because their exclusion resulted from a misapplication of PERB precedent. The hearing officer's determination to exclude tool room assistants was significantly based on the PERB decision in Marin Community College District (6/26/78) PERB Decision No. 55. In Marin, petitions for recognition were filed covering all classified employees, and the PERB established three units (operations and support services, office technical and business services, and quasi-professional employees). By contrast, in this case only an operations and support services unit has been sought, and the possible placement of employees in a quasi-professional unit - which no party seeks - should not guide the decision on appropriate units. To the contrary, having decided that an operations and support services unit is appropriate, the only remaining question is whether the tool room assistants should be included in that unit based on community of interest factors alone, without reliance on the Marin decision or preference for a quasi-professional unit. A weighing and balancing of the

community of interest factors, especially the non-instructional role of the tool room assistants, leads to the conclusion that these employees are properly placed in the operations and support services unit. Regarding the laboratory assistants, however, the weighing and balancing of community of interest factors indicates that they lack a community of interest with operations and support services employees and are therefore properly not included in the unit.

Finally, I disagree that there should be a presumption that the tool room assistant classification belongs in the operations and support services unit. The "presumptively appropriate unit" precedent of the PERB has concerned only the general type of bargaining unit. It has not been applied to determine whether certain classifications are in a presumptively appropriate unit. Unit placement of individual classifications should continue to be decided by weighing the evidence in each case.

Irene Tovar, Member

Barbara D. Moore's concurrence and dissent begins on page 12.

Barbara D. Moore, Member, concurring and dissenting:

I agree with the majority's decision that CSEA's proposed operations and support services unit is presumptively appropriate and that the District has failed to rebut the presumption. I dissent, however, from the majority's decision to review, sua sponte, the hearing officer's decision to exclude tool room assistants from the unit.

When no party has excepted to a hearing officer's determination on a particular issue, I believe that the Board should, with rare exceptions, refrain from reviewing that issue. The Board is essentially an appellate body and reviews only cases where exceptions are submitted by a party. If the parties to a hearing officer's decision are satisfied and do not appeal, it is allowed to stand.

Similarly, if the parties' exceptions are directed at only certain portions of the decision, the other portions should be allowed to stand without Board review. I believe there are strong considerations favoring this approach and militating against that taken by the majority.

The majority's opinion in this case runs counter to this Board's policy of encouraging parties to voluntarily settle issues in dispute. Parties in effect reach a partial settlement by accepting a hearing officer's resolution of particular issues. The majority's approach disrupts this settlement by resurrecting the issues.

Also, the majority's approach has a disturbing impact on a party's decisions to file exceptions to a proposed decision. If even a limited exception may trigger full review by the Board, a party will need to consider whether or not an appeal will threaten potential reversal of satisfactory portions of the hearing officer's determination.

Further, a party cannot know whether the Board will review the entire decision or only certain portions because the Board has no standards on the issue of reviewing matters not excepted to. Since I have been here, the Board has not taken up such matters. However, PERB decisions range from Rio Hondo Community College District (1/25/79) PERB Decision No. 87 and Monterey Peninsula Community College District (10/16/78) PERB Decision No. 76 (cited by Members Gluck and Jaeger) to Gilroy Unified School District (7/20/79) PERB Decision No. 98, in which the Board stated: "No exceptions were taken to the supervisory issue, and it is therefore not in issue before the Board." (Id., p. 5). The absence of standards, while permitting the Board the flexibility to take up issues not excepted to when it wants and ignore them when it so chooses, places the parties in a hopeless quandary. They must either frame their appeals to cover all issues or risk reversal without having argued their positions on the hearing officer's ruling.

No coherent policy of Board review emerges from past Board

decisions, and none is forthcoming in this case. Without such a policy, our decisions may be misconstrued if parties begin to believe that when we do not consider issues not excepted to we are in actuality approving the hearing officer's resolution of them. While such an assumption may or may not be accurate, it is likely to lead to confusion about Board policies and decisions.

Thus, if the Board is, in essence, going to review all issues raised in hearing officers' decisions, it should so state. If it is not, it should delineate those circumstances under which it will. Only one member even attempts such a delineation, and I think the three standards, taken together, are so broad as to not impose any real limitation.

I am unable to perceive any boundaries to a policy which would permit review of issues involving a "miscarriage of justice." As a practical matter, such a standard would continue to permit unfettered Board review. I believe, however, that the first circumstance articulated by Member Tovar provides a workable standard. Where a hearing officer's determination is clearly contrary to the EERA or PERB policy, then and only then should the Board review it if it is not excepted to. For example, EERA expressly provides that classified and certificated employees shall not be in the same unit. A proposed decision violating this stricture would, I believe, be grounds warranting review.

In this case, I do not believe that the hearing officer's reliance on Marin Community College District (6/26/78) PERB Decision No. 55 rises to this level. The hearing officer fully analyzed the appropriate placement of the tool room assistant based on community of interest factors and determined that the classification "[did] not share a community of interest with the Operations and Support positions." (Id. at p. 14) She then cited Marin, supra, to buttress this finding. While reliance on Marin may not have been appropriate, I do not find that it amounted to a determination clearly contrary to PERB policy. Therefore, absent a specific objection, I would not, sua sponte, reach the issue of the placement of the tool room assistant. While the foregoing conclusion obviates the need for me to determine the appropriate placement of this classification, I note for the record that I disagree with the view that the tool room assistant presumptively belongs in the unit. Rather, I agree with Member Tovar's analysis on this issue.

Based on the foregoing, I would summarily affirm the hearing officer.

Barbara D. Moore, Member

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA



ANTELOPE VALLEY COMMUNITY COLLEGE DISTRICT,)	
)	
Employer,)	Representation
)	Case No. LA-R-424
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)	<u>PROPOSED DECISION</u>
)	
Employee Organization.)	(8/20/80)
)	

Appearances: Patrick D. Sisneros, Attorney (Wagner and Wagner),
for Antelope Valley Community College District; Diane Powell, Field
Representative for California School Employees Association.

Before Patricia Hernandez, Hearing Officer.

PROCEDURAL HISTORY

On May 24, 1979 the California School Employees Association
(hereafter CSEA) filed a request for recognition with the
Antelope Valley Community College District (hereafter District)
for a unit consisting of the following classifications:
maintenance, grounds, custodial, security/operations worker,
storekeeper, locker room attendant and science laboratory
technician. On or about June 8, 1979, CSEA amended its request
for recognition to include the classification of tool room
assistant.

The District filed its response to the request for
recognition on August 28, 1979, challenging the appropriateness
of the unit itself as having a detrimental effect on the

efficient operation of the District. The response also disputed the positions of locker room attendant, tool room attendant and science laboratory technician as not having a community of interest with the petitioned for unit.

On October 24, 1979, an informal conference was held. A formal hearing was held on January 23, 1980 and February 21, 1980. The District filed its brief on May 15, 1980. CSEA did not file one.

At the hearing, CSEA amended its request for recognition to include food service worker I and food service worker II (actually cafeteria assistant I and II). The District challenged the classifications as lacking a community of interest. The District also changed its position on the security/operations worker, bringing its placement into dispute.

During the course of the hearing the District clarified its position to be that no unit was appropriate but that if a unit was found to be appropriate the disputed classifications (named above and in the employer response) should be excluded. The District stipulated that, apart from the fact that it believed no unit was appropriate, and apart from the disputed positions, the unit petitioned for by CSEA was appropriate. That unit being the maintenance, grounds, custodial and storekeeper classifications (hereafter Operations and Support Unit).

The parties stipulated that the District is an employer within the meaning of section 3540.1(k)¹ and that CSEA is an employee organization within the meaning of section 3540.1(j). They stipulated that certain classified positions were excluded from the unit as either management or supervisory.²

ISSUES

1. Whether the Operations and Support Unit petitioned for by CSEA is an appropriate unit and, if so,
2. Whether the following disputed positions should be included in the unit:

science laboratory technician
tool room assistant
locker room attendant
security/operations worker
cafeteria assistant

The Appropriate Unit

Antelope Valley Community College District is a single campus district with an average daily attendance of 3,200. It has 97 classified employees of which approximately 85 are rank and file employees, that is, non-management, non-supervisory or

¹All citations are to the Government Code, title 8, section 3540 et seq. unless otherwise specified.

²The parties stipulated to the exclusion of the following positions: director of student activities and data processing coordinators (see PERB Decision HO-R-52) and athletic trainer/equipment manager, cafeteria supervisor, book store manager, director of fiscal operations, director of admissions and coordinator of veteran's affairs, maintenance and operations supervisor, head custodian and head groundsman.

non-confidential employees. There is currently no classified unit in place.

The unit petitioned for by CSEA, including the disputed positions, represents approximately 30 to 33 employees. Without the disputed positions, the unit consists of approximately 20 employees.

Government Code section 3545(a) provides:

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 this case there is no dispute as to the community of interest between the operations and support positions. The District did not raise this as an issue. Moreover, the Board has found Operations and Support Units to be presumptively appropriate in Sweetwater Union High School District³ and Fremont Unified School District⁴ as well as in other cases. It is to be noted, however, that unlike Sweetwater and Fremont, the placement of cafeteria employees in the unit is disputed.

³Sweetwater Union High School District (11/23/76) EERB Decision No. 4. Prior to January 1, 1978, the PERB was known as the Educational Employment Relations Board.

⁴Fremont Unified School District (12/6/76) EERB Decision No. 6.

For reasons explained later, it is found that cafeteria employees share a community of interest with the operations and support classifications and therefore properly belong in the same unit.

The community of interest criteria of the Operations and Support Unit (excluding cafeteria employees) are noted herein so as to form a basis for comparison with the disputed positions.

The operations and support employees share a common line of supervision. They report to the director of maintenance and operations who in turn reports to the vice-president of business services. They work 12 months a year, 8 consecutive hours a day. Their salaries fall within the same salary ranges. No special education or training is required except that some experience in the field is desired. They, as well as all classified employees, are under the same fringe benefit program. Virtually all classified employees are paid out of the District general fund (the only exceptions are CETA and cafeteria employees). Their primary job involves providing a proper physical environment and support services for students.

In addressing past practices, CSEA has been an employee organization at the District for at least 10 years. In 1976, as evidenced by the case file, CSEA sought to represent all the classified employees by filing a request for recognition with the PERB. No other employee organization filed a competing

claim.⁵ In 1977 an in-house organization⁶ was formed. However, as testified to by a former CSEA president, the competing organization is no longer in existence. With the exception of the in-house organization no other organization has sought to represent the classified employees including those petitioned for by CSEA.

Based on the foregoing, it is accepted that the Operations and Support classifications appropriately belong in the same unit.

The only question remaining with respect to determining the appropriate unit is essentially whether any unit at all is appropriate. The District argued that no unit is appropriate based on cost. Counsel for the District argued that the cost associated with administering and negotiating an agreement would be disproportionate to the number of employees involved in the requested unit. He indicated that the cost of such a small unit would be detrimental to the efficient operation of the District and would remove substantial funds available for educational purposes.

⁵A representation election was held by the PERB in 1978. "No Representation" received a majority of the votes cast.

⁶An unfair practice charge was filed with PERB by CSEA relative to the in-house employee organization. The charge was sustained insofar as it alleged violation of subdivisions (a) and (d) of section 3543.5 of the Educational Employment Relations Act. See Antelope Valley Community College District, (7/18/79) PERB Decision No. 97.

Because of the size of the District, Dr. C. W. Stine, superintendent/president acts as the personnel officer of the District. He is responsible for handling the employer-employee relations of the District. Dr. Stine testified that if a unit was established, a personnel office would have to be created; the estimated cost of which would be over \$42,000 per year. No evidence was presented on what the estimated cost was based.⁷

The personnel office would handle all contract negotiations and the administration of an agreement once a unit was in place. Dr. Stine indicated a team of contract administrators, legal counsel, a management team and a personnel administrator would probably be needed if a unit was created. It was Dr. Stine's testimony that he had no experience negotiating or administering an agreement under the EERA. His experience was under the Winton Act with memoranda of understanding. Lastly, it was his testimony that in terms of cost and efficiency of operations there was no basic difference in managing a unit of 10 employees as compared to one of 100 employees. The only caveat was that, "Any element of the contract given to twenty people would certainly have to be considered to be given to the

⁷There was testimony on costs incurred by the District since 1976 relative to matters under the EERA; however, those were not incurred as a result of classified collective bargaining since there has never been a classified unit in the District.

other seventy or eighty." He indicated this would cause disruption.

In addressing the argument that no unit is appropriate, the hearing officer turns to the Educational Employment Relations Act itself to quote the express purpose for which it was enacted.

3540. PURPOSE OF CHAPTER

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit [Emphasis Added]

This section recognizes the rights of public school employees to join, be represented and select one employee organization as the exclusive representative of an appropriate unit or to choose not to be represented. Thus, the right of employees to be placed in an appropriate unit if they so desire is provided by law.

The argument that no unit is appropriate because a personnel office would have to be created is rejected for a number of reasons; first, the law expressly grants employees the right to elect or not to elect an exclusive representative.

Inherent in this right is the right to placement in an appropriate unit. Secondly, the evidence presented to support the contention that a personnel office would be required was highly speculative.

With respect to the criteria set forth in Government Code section 3545(a) the effect of the size of the unit on the efficient operation of the school district, Dr. Stine's testimony was that there was no basic difference in managing a unit of 10 as opposed to a unit of 100 employees.

While counsel for the District argues that the cost of administering an agreement is disproportionate to the number of employees it will benefit, this is not a basis for finding that the unit is inappropriate. Moreover, there was an absence of any evidence on the effect of the size of the unit. Lastly, it should be pointed out that the efficiency of operation criteria is set forth in the statute to help decide the appropriateness of a unit relative to the proliferation of units, not to the question of whether any unit at all is appropriate.

Based on the foregoing, the argument that no unit is appropriate is rejected.

Disputed Positions

The Operations and Support Unit petitioned for by CSEA includes the disputed positions of tool room assistant, and science laboratory technician. In Marin Community College

District,⁸ the Board dealt with similiar positions which it placed in a Technical/Quasi-Professional Unit. The Technical/Quasi-Professional Unit was established because the Board acknowledged that community college districts have different staffing patterns than K-12 districts and that as a result the "paraprofessional" unit created in Sweetwater, supra, Fremont, supra, and Pittsburg Unified School District⁹ could not easily be used for community college districts. In applying the community of interest criteria, the Board found the Technical/Quasi-Professional Unit employees to have a separate and distinct community of interest from the skilled trades, operations and clerical employees.

The Board found that positions such as life science laboratory technician, instructional assistant or A-V technician, for example, function at a relatively advanced level, often bordering on the professional. They were generally required to have an educational background equivalent to two years of college, including course work related to the area in which the technician worked or they had to possess, as a result of experience, a degree of technical knowledge. Their work often required the exercise of independent judgment. The

⁸Marin Community College District (6/26/78) PERB Decision No. 55.

⁹Pittsburg Unified School District (10/14/76) EERB Decision No. 3.

Board also found that, while some classifications were not required to have relatively high educational qualifications, they did share with other classifications the possession of a specialized skill. In addition, many of the positions required direct work with students. Their work often related to the educational mission of the institution.

Science Laboratory Technician

In the Antelope Valley Community College District, the science laboratory technician functions in the same general manner as did the life science laboratory technician in Marin, supra. The science laboratory technicians are supervised by the instructors with whom they work. They report to the dean of math/science who in turn reports to the vice president of academic affairs. Science laboratory technicians are required to have an educational background equivalent to two years of college with an area of specialization in science or one year of technical laboratory experience or a combination of the two. Their job is for the 10-month school year. They perform and set up laboratory experiments, grade papers, order and receive stock, maintain and issue technical and scientific laboratory supplies and equipment. Testimony from two technicians revealed that one spent 10 to 15 percent of her time in direct contact with students while the second spent at least 50 percent of her laboratory time instructing students. Both agreed that most of their duties were technical in

nature. One technician indicated she exercised independent judgment frequently on her job.

In applying the community of interest criteria to the science laboratory technician it is found that unlike the operations and support classifications their primary job function is tied to the educational mission of the college. Their work involves working with students. Science laboratory technicians are employed 10 months per year as opposed to 12 months. They have a separate line of supervision than do the operations and support employees. The educational and experience requirements are more demanding than is required for Operations and Support employees. And, they possess a high degree of technical knowledge.

As previously mentioned, in Marin, supra, p. 10, the Board dealt with the similar position of life science laboratory technician. That position functioned in virtually the same manner as does the science laboratory technician here. The Board placed it in the Technical/Quasi-Professional unit because it possessed a separate and distinct community of interest from the clerical or operations and support classifications based on job function, level of technical knowledge, educational requirements and other criteria.

Based on the facts in this case and on the foregoing, it is found that the science laboratory technician does not have a

community of interest with the operations and support employees and is therefore excluded from the unit.

Tool Room Assistant

The tool room assistants are supervised by the instructors with whom they work. They report to the dean of technical education who in turn reports to the vice-president of academic affairs. The tool room assistants set up and prepare mockups and displays for class instruction. They issue and receive tools from students; perform maintenance and repair work on electronic and/or automotive supplies and equipment and do related work as required.

There was conflicting testimony as to whether tool room assistants instruct students in safety and assist them with experiments. The vice-president of academic affairs testified that tool room assistants instruct students in safety and assist them with laboratory experiments. On the other hand, the tool room assistant who testified indicated he did not instruct students; however he agreed he worked with students for the major part of his day.

The tool room assistant testified he performed some custodial duties including heavy work such as chemical cleaning of the floors (this is done once a week), filling soap and towel containers, emptying the trash and general cleaning of the shop. His supervisor testified that everyone in the shop,

instructors included, participated in the general upkeep and cleaning of the shop but that only tool room assistants and students did the heavy work. The training and/or experience required is the equivalent to completion of two years of college course work in electrical or automotive maintenance or one year of issuing and maintaining electronic or automotive equipment or a combination of the two.

Some interaction with maintenance employees was shown. If a problem arose, for example, with a plugged drain, the tool room assistant would first attempt to unplug the drain himself. If unsuccessful, he would contact a maintenance worker. At times the two would work together to correct the problem. The tool room assistant testified, however, that it was not his job to perform maintenance duties but that he became involved because it was his responsibility to make sure the shop ran smoothly.

In applying the community of interest criteria to this position it is found that it does not share a community of interest with the Operations and Support positions. Tool room assistants work 10 months per year. Their work is student oriented. Even though the tool room assistant who testified did not instruct students, he worked with them for the major part of his day. The job is technical in nature and requires specialized skill to perform it. Unlike the operations and support classifications, two years of education or significant

experience in the field is required for employment. Although some custodial duties are performed, they are duties which could be viewed as somewhat incidental to the position. In any event, the custodial duties as performed are not sufficient to establish a community of interest with the operations and support employees since the majority of the time is spent doing technical work, issuing and receiving equipment from students, or setting up and preparing mock-ups for class instruction. The interaction shown with maintenance employees is also not sufficient to warrant inclusion of the tool room assistant in the Operations and Support Unit. Lastly, this position does not share a common line of supervision with the maintenance, grounds or custodial employees.

In Marin, supra,¹⁰ the Board found that technical positions such as this appropriately belong in a unit separate from the operations and support classes based on community of interest factors.

In light of all of the above, the tool room assistant is excluded from the unit.

Locker Room Attendant

The locker room attendant assigns lockers and issues athletic equipment to girls' classes. She mends, launders and repairs athletic equipment, sweeps floors, washes windows,

¹⁰See Marin Community College District, supra, p. 8 discussion on electronic technician.

empties trash and scrubs showers in the locker room. The locker room attendant testified she spent approximately 50 percent of her time performing custodial duties and 50 percent with students issuing athletic equipment and/or lockers.

It was her testimony that she did not instruct students. The job description makes no mention of instructing students as part of the duties to be performed. The District indicated the position was listed under the accounting classification of instructional aides. It indicated that instructional aides assist in all phases of instruction under the instructor's over-all supervision. Other than this, no evidence was presented which would contradict a finding that the locker room attendant does not instruct students. It should be noted that the accounting classification of a position is not persuasive in determining actual job duties, especially in light of contrary evidence relating directly to duties performed.

The job description indicates that six months of related work experience or any combination of training, education and/or experience which could provide the required knowledge is needed for employment. This position has very little interaction with custodians and none at all with the grounds employees. However, contact with the maintenance workers occurs frequently. The locker room attendant testified that she

occasionally helped maintenance workers repair items, however, not as a regular part of her job.

The position of locker room attendant was upgraded from matron to locker room attendant. CSEA submitted a reclassification proposal on behalf of the employee based on like pay for like work relative to custodians. The position was thereafter upgraded to its current range which is one range higher than custodians. It is on the same range as the groundskeeper. There was testimony that the upgrade occurred after a survey was conducted which recommended the change. It is unclear from the record which party initiated the survey. It is also unclear why the reclassification occurred; either as a response to CSEA's proposal or as a result of the survey.

The locker room attendant reports directly to the dean of physical education and athletics. She works 10 months per year.

In applying the community of interest criteria to the facts, it is concluded for the following reasons that the locker room attendant appropriately belongs in the Operations and Support Unit.

The employee in this position spends 50 percent of her time doing custodial duties. The remaining 50 percent is spent performing other duties. Unlike the tool room attendant or the science laboratory technician, the locker room attendant is only required to possess six months of related work experience.

The locker room attendant does not perform highly specialized or technical duties which would require the use of independent judgment. Her duties appear to be routine in nature. She does not instruct students. Nor was there any evidence presented to show that she acts as an assistant to instructors in any capacity. Unlike the tool room assistant and the science laboratory technician who prepare mock-ups or laboratory experiments, the locker room attendant simply assigns locks and issues athletic equipment to students. This aspect of her job can be compared to the work performed by cafeteria workers who prepare and serve food to the students. Both of these positions are involved with students; however, their involvement is not like that of the employee who actually prepares laboratories and participates with instructors.

Although the locker room attendant, unlike the operations and support employees, works ten months per year and reports directly to the dean of physical education, she nonetheless has a community of interest with the operations and support employees based on job function. Her job function relates to providing a proper physical environment and support services for students. At least half of her job is strictly custodial in nature. The other half concerns itself with non-technical, rather routine duties.

This position is on the same salary range as the groundskeeper. Some interaction was shown with maintenance employees.

Taken as a whole, considering especially job function and the lack of specialized or highly technical knowledge, as well as salary, interaction with maintenance employees, and experience requirements, the position has a community of interest with the operations and support classifications, in spite of a different work year and separate supervision.

Based on the foregoing, it is found that the locker room attendant appropriately belongs in the petitioned-for unit.

Security/Operations Worker

There are currently three employees in the security/operations classification; two regular and one CETA. These people perform a combination of security and custodial functions. For the security portion of their work they report directly to the vice-president of business services. They are responsible to the director of maintenance and operations for the custodial portion of their work. The vice-president of business services testified that their primary job function is security. One employee spends 50 percent of his time in security and 50 percent in custodial; one spends 60 percent or approximately two-thirds in security and one-third in custodial. The last employee spends 75 percent of his time performing security functions and 25 percent in custodial work. The vice-president of business services testified that

the employee working only 50 percent of the time in security did so because "there are lots of other instructors on campus and this takes some need for security off." This employee works from 4:00 p.m. to 12 midnight, Monday through Friday. The other two employees work from 10:00 p.m. to 6:00 a.m. One of them works the weekend shift, Wednesday through Sunday. He functions 75 percent of the time in security.

Security/operations workers patrol the campus during evenings, weekends, holidays and other assigned times checking doors and exits. They provide security service to avoid emergency situations such as fire, thefts, vandalism, trespassing and improper use of facilities. They provide custodial work such as sweeping, scrubbing, picking up refuse and disinfecting. They also perform some minor maintenance duties such as changing light bulbs, semi-skilled painting, carpentry and other minor maintenance duties as may be assigned.

The salary range of this classification falls within the ranges of the maintenance, grounds and custodial employees. In terms of the experience required, the job description indicates that previous security guard experience is desirable. No special training courses, license or education in security is specified as a requisite for employment.

No evidence was presented on whether these employees are deputized, wear uniforms, carry guns or night sticks or are empowered to enforce rules and regulations of the District.

The District argues that this classification should be excluded from the unit based on a lack of community of interest because their primary job function is security. The District cites Sacramento City Unified School District¹¹ as precedent to exclude this classification.

Although counsel for the District cites Sacramento as precedent, the facts in the two cases are substantially different. In fact, there is an absence of Board precedent on the security/operations workers as they function at the Antelope Valley Community College District. The Board created a separate unit of security officers in Sacramento. They cited the following rationale:

We conclude that a separate unit of security officers is appropriate. Strong policy considerations, long recognized in the private sector, require the separation of bona fide security guards from the remainder of the classified employees. Security Officers are deputized and employed to defend the District's premises from others, be they outsiders, students or other employees of the District. They are empowered to enforce not only the rules and regulations of the District, but also the laws of the City of Sacramento. The employer is entitled to a nucleus of

¹¹Sacramento City Unified School District (9/20/77) EERB Decision No. 30.

protection employees to enforce its rules and protect its property and persons without being confronted with a division of loyalty inherent in the inclusion of security officers in the same unit with other classified employees.

The security guards in Sacramento were bona fide security guards. They wore uniforms, carried a gun and a night stick and used patrol cars equipped with a light and siren. They were deputized peace officers of the State of California, pursuant to California Penal Code section 830.4(a)(13), to make arrests for crimes committed on the school grounds. In addition, they were empowered to enforce the laws and regulations of both the District and the City of Sacramento.

In this case there was no evidence relative to the security/operations workers having any of the characteristics of the security officers in Sacramento. There was no evidence that they are deputized or empowered in any manner to make arrests or even to enforce the employer's rules and regulations. In neither the job description nor the testimony is there any mention made of their responsibility or authority to enforce rules and regulations. The evidence shows that security/operations workers patrol the campus checking doors and exits. They provide security service to avoid emergency situations. Moreover, they have the dual responsibility of security and custodial functions. This was not the case in Sacramento.

In addressing community of interest criteria, this classification is on the same salary range as the groundskeeper. The level of experience required for employment is generally the same as for the operations and support classifications. There was no evidence that security/operations workers were ever represented separately from other classified employees either by CSEA or any other employee organization.

Even though these employees are supervised by the business manager for 50 percent or more of their work, they have a common line of supervision with the operations and support classifications for the custodial portion of their work. Their job function, at least in part, is to perform custodial duties. They also have some minor maintenance duties which further ties them to the operations and support employees.

Although these employees perform security duties for 50 percent of the time or more, they are not duties which justify excluding them from the petitioned-for unit. The Board in Marin, supra, p. 3, adopted as an appropriate unit a skilled trades and operations unit which included campus police, watchman and parking patrol officers. Moreover, in other jurisdictions where this issue has been raised, security workers were included in the classified unit. For example, in

the Broward Community College District,¹² the Florida Commission included security guards in a college-wide classified unit. The guard duties involved safeguarding college grounds, buildings and equipment against fire, theft, trespass and other hazards. The commission placed the security guards in the unit based on job duties. While the Florida case is not precedent, it does provide guidance in the proper placement of this position.

It is concluded that the security/operations workers have a community of interest with the petitioned for unit and therefore properly belong in the unit.

Cafeteria Assistant

While counsel for the District raised this as an issue, precedent clearly establishes the appropriateness of placing cafeteria workers in an operations and support unit. In fact, in Beverly Hills Unified School District¹³ the Board found an Operations and Support Unit to be inappropriate because it excluded food service employees.

In this case, the District argues that unlike Sweetwater, supra, p.10 where the ultimate manager of the custodians,

¹²Broward Community College District (FLA PERC 1980) 6 FPER Paragraph II037.

¹³Beverly Hills Unified School District (8/8/78) PERB Decision No. 63.

maintenance and cafeteria assistant was the business manager, the cafeteria assistants at Antelope Valley Community College District report to a supervisor who in turn reports to a director of auxiliary services, who in turn reports to the vice-president of student affairs.

In 1976, cafeteria assistants were designated either cafeteria assistant I or II. The primary difference between them was that the II actually prepared meals while the I only assisted in the preparation of meals. In 1977, or early 1978, the differentiation was informally done away with. Cafeteria assistants currently function and are paid on the II range. Formal board action to abolish cafeteria assistant I has never been taken.

The cafeteria assistants work 10 months a year as opposed to 12 months. The cafeteria operates out of a separate fund. It does not sustain itself with monies out of the general District fund but rather out of its own reimbursable fund. There is interaction between cafeteria assistants, maintenance and custodial employees. Custodial employees do the heavy cleaning in the cafeteria. Maintenance people work in the cafeteria as the need arises. One cafeteria assistant testified that shelves and a new counter were installed while she was at work. A cafeteria assistant cooks, bakes, prepares and serves food and beverages, cleans cafeteria and snack bar equipment, and does related work as required.

In Fallbrook Union High School District,¹⁴ the Board found that, although cafeteria employees were under separate direct supervision from the maintenance, custodial and gardening employees, they nonetheless belonged in the same unit. They found that all of these employees had a common purpose of providing a proper physical environment and support services for students. In Sweetwater, supra, the cafeteria operated out of a separate fund. In addition, the employees worked 10 months per year as opposed to 12 months, yet the Board found a community of interest between these employees based on job function.

The District's argument that the cafeteria assistants are distinguishable from Sweetwater, supra, is not persuasive in light of Fallbrook. Moreover, even though the cafeteria assistants have some characteristics which distinguish them from the operations and support employees, they do not have a separate and distinct community of interest. Their primary job function is to provide a proper physical environment and support services for students. Therefore, based on the foregoing it is found that cafeteria assistants properly belong in the petitioned for unit.

Also based on the foregoing, the classification of cafeteria assistant I, if reactivated, shall be included in the unit.

¹⁴Fallbrook Union High School District (12/4/78) PERB Decision No 78.

In conclusion, it is found that the Operations and Support Unit petitioned for by CSEA including the positions of cafeteria assistant, security/operations worker and locker room attendant is an appropriate unit within the meaning of Government Code section 3545.

PROPOSED ORDER

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

1. The positions of science laboratory technician and tool room assistant do not share a community of interest with employees in the Operations and Support Unit and are therefore excluded.
2. The positions of security/operations worker, locker room attendant and cafeteria assistant are appropriately included in the Operations and Support Unit.
3. The following is an appropriate unit, provided an employee organization becomes the exclusive representative:

Operations and Support Unit

Including: Custodian, groundskeeper, maintenance/operations worker, maintenance worker, skilled maintenance worker, storekeeper, cafeteria assistant, locker room attendant and security/operations worker. Excluding: All other employees and all management, supervisory and confidential employees as defined by the Educational Employment Relations Act.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on September 10, 1980, unless a party files a timely statement of exceptions within twenty (20) calendar days

following the date of service of the decision. Such statement of exceptions and supporting brief must be actually received by the Executive Assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.)

on September 10, 1980, in order to be timely filed. (See California Administrative Code, title 8, part III, section 32300.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon the other party to this proceeding. Proof of service shall be filed with the board itself. (See California Administrative Code, title 8, part III, section 32140.)

Upon notice that this Proposed Decision and Order has become final, the Regional Director shall conduct an election for the operations and support employees as herein described unless the employer grants voluntary recognition. Voluntary recognition requires proof of majority support in all cases. (See Government Code sections 3544 and 3544.1.)

Date: August 20, 1980

Patricia Hernandez
Hearing Officer