



STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD

PLEASANTON JOINT SCHOOL DISTRICT,	)	
AMADOR VALLEY JOINT UNION HIGH	)	
SCHOOL DISTRICT,	)	Case No. SF-R-92X
	)	
Employers,	)	
	)	
and	)	
	)	
AMADOR-PLEASANTON SCHOOL PSYCHOLOGISTS	)	PERB Decision No. 169
ASSOCIATION,	)	
	)	
Employee Organization,	)	June 25, 1981
	)	
and	)	
	)	
AMADOR VALLEY TEACHERS ASSOCIATION	)	
	)	
Limited Party.	)	

Appearances: Thomas C. Agin for Amador-Pleasanton School Psychologists Association; John Hudak (Breon, Galgani and Godino) for Pleasanton Joint School District: Amador Valley Joint Union High School District; Barbara H. Van Becker for Amador Valley Teachers Association.

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

DECISION

The Amador-Pleasanton School Psychologists Association (hereafter APSPA) excepts from the attached decision denying its petition for a unit consisting of only school psychologists as inappropriate. For reasons discussed below, we reverse the hearing officer's determination and grant the petition for recognition.

### FACTS

The facts set forth in the attached hearing officer's decision are free from prejudicial error and are hereby adopted as the findings of the Board itself.

### DISCUSSION

Although the five school psychologists may share a community of interest with the preexisting unit of certificated employees, the posture of this case requires us to look beyond that factor alone.

Initially, the school psychologists were designated by the Pleasanton Joint School District and Amador Valley Joint Union High School District (hereafter Districts) as management employees and were not included in the original petitions for recognition filed by employee organizations seeking to represent the certificated unit. Subsequently, the Districts reclassified the psychologists as nonmanagement. APSPA filed a petition for recognition on January 23, 1980, claiming that a separate unit of psychologists was appropriate for bargaining. Despite the fact that the Amador Valley Teachers Association (hereafter AVTA) claimed that it was willing to represent the psychologists in the unit of certificated employees,<sup>1</sup> that organization did not file a petition for unit modification

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<sup>1</sup>AVTA is the exclusive representative of the Districts' regular classroom teachers, special education instructors, counselors, speech therapists, and school nurses.

prior to APSPA's filing its petition for recognition, even though such a petition would be acceptable under Public Employment Relations Board (hereafter PERB or Board) rule 33261.<sup>2</sup> Nor did AVTA attempt to intervene in APSPA's petition pursuant to PERB rule 33070.<sup>3</sup> Consequently, the issue is simply whether the petitioned-for unit is appropriate standing alone.<sup>4</sup>

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<sup>2</sup>Board rule 33261 (Cal. Admin. Code, tit. 8, sec. 33261) reads in pertinent part:

(a) A recognized or certified employee organization may file with the regional office a petition for unit modification pursuant to Government Code section 3541.3(e):

(1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit, provided such petition is filed at least 12 months after the date of said recognition or certification, . . .

<sup>3</sup>Board rule 33070 provides in pertinent part:

(a) Except as provided in Section 33700(c), an intervention by an employee organization shall be filed with the employer within 15 workdays following posting of the request for recognition, utilizing forms provided by the Board or the format outlined below. . . .

<sup>4</sup>See Arcadia Unified School District (5/17/79) PERB Decision No. 93, where the Board approved a separate unit of support services personnel, noting that:

. . . the fact that [the Board] has, in previous decisions, found an overall certificated unit appropriate does not preclude the Board from finding a separate

The Educational Employment Relations Act (hereafter EERA)<sup>5</sup> explicitly guarantees in section 3540:

. . . 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, . . .

In this case, rejecting APSPA's petition for recognition would effectively deny the psychologists' right to representation. Absent convincing evidence in support of the Districts' claim that efficiency of its operations would be impaired, or that the unit would otherwise be inappropriate, a denial of the petition would run counter to the purpose of EERA. The Board is not unmindful of the problems inherent in a proliferation of representational units or the fragmentation of the work force. Indeed, the potential impairment of District operational efficiency may be matched, in our view, by an equally desultory impact on the employee representatives' ability to conduct effective negotiations in the face of the various competing interests involved.

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unit of non-instructional certificated employees appropriate under the circumstances of this case. (p. 14.)

<sup>5</sup>EERA is codified at Government Code section 3540 et seq. All statutory references herein shall be to the Government Code unless otherwise specified.

But, we are no less mindful of the fact that the sensitive and perplexing problem of coping with the legitimate desires of residual islands of unrepresented school employees that dot the patchwork landscape of unit configurations throughout the State is the consequence, not of application of the statutory criteria governing unit determinations, but of voluntary recognitions and stipulations as to appropriateness entered into by the parties and accepted without factual support by this Board.<sup>6</sup> Initially, the employers here unilaterally "determined" that the psychologists were management employees. Neither of the original petitioners contested that decision. The PERB hearing officer, without benefit of supporting evidence, excluded the psychologists from the unit as managerial personnel.<sup>7</sup> The Board itself subsequently affirmed that decision, presumably on the basis of the parties'

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<sup>6</sup>In Centinela Valley Union High School District (8/7/78) PERB Decision No. 62, the Board reversed its previous policy of the perfunctory establishment of stipulated units and indicated that petitions based on such agreements would henceforth have to be supported by factual evidence of appropriateness.

<sup>7</sup>The hearing officer's decision (8/10/77) found the following unit to be appropriate:

All certificated employees including  
counselors, but excluding management,  
supervisory, and confidential employees.

It is uncontested that the psychologists were excluded from the unit under the management exception.

tacit agreement as to the exclusion. Whatever the reasons,<sup>8</sup> there are throughout the school system units ranging in size, shape, and content which exclude specific fragments of the eligible work force. It is this disenfranchisement by contract, rather than by law, which is now being protested by employee groups such as the psychologists in this case.

In the final analysis, this Board is faced with the task of balancing the employer's statutory right to grant voluntary recognition without our approval,<sup>9</sup> or the parties' opportunity to agree on the unit of representation, against the right of covered employees to participate in the representation system designed by the Legislature as the preferred means of resolving employer-employee disputes and maintaining continuity of the educational process.

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<sup>8</sup>The Board is aware that unit petitions may be based on the petitioners voting strength vis-a-vis potential competitors, the 50 percent proof of support required for voluntary recognition, and other factors distinct from the criteria imposed on PERB by section 3544(a). Similarly, an employer's voluntary recognition may be based on exclusionary concessions made by the petitioner, the employer's preference for a particular representative and other considerations.

<sup>9</sup>The Board may have considered the employer's right to grant voluntary recognition as absolute even though section 3544(a) authorizes petitions for recognition in "an appropriate unit." Section 3544.1 states that:

The public school employer shall grant a request for recognition filed pursuant to section 3544 unless:

(a) The public school employer . . . doubts the appropriateness of a unit. . . .  
(Emphasis added.)

It is not suggested here that the Board can or will accommodate the interests of every nonrepresented group of school employees. Where and under what conditions the Board will or will not grant additional units, small or otherwise, is best left to case-by-case determination. The facts in this case justify granting the petition.

While this Board has, in the past, determined that school psychologists are appropriately included in teachers' units,<sup>10</sup> we have also deviated from this configuration when presented with adequate justification for doing so, Arcadia Unified School District, supra, fn. 4. Finding a separate unit is not tantamount to finding a lack of community of interest with the preexisting unit.<sup>11</sup>

Although the psychologists may share the interests and concerns typical of all certificated employees, there are distinctions in the District's practices and employee organizational activities which characterize this group and

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<sup>10</sup>Los Angeles Unified School District (11/24/76) EERA Decision No. 5; Grossmont Union High School District (3/9/77) EERB Decision No. 11; Oakland Unified School District (3/28/77) EERB Decision No. 15.

<sup>11</sup>See Compton Unified School District (10/26/79) PERB Decision No. 109 where the Board found that a presumptively appropriate unit configuration does not establish the "only appropriate" unit or even the "most appropriate" unit.

satisfy the statutory criteria<sup>12</sup> employed by the Board in determining unit appropriateness. Their primary duties include: the assessment of students' special educational needs, their placement in appropriate remedial programs, and counseling with students, parents, and teachers. The psychologists are on a separate pay schedule from instructional personnel, work 12 more days per year than do teachers, and are under a different line of supervision. The psychologists have never been members of AVTA or sought its assistance in employment-related matters. They do, of course, support petitioners, APSPA. Thus, irrespective of whatever community of interest the psychologists show with the existing certificated unit, the psychologists' own community of interest, the history of separate representation, the lack of conclusive proof that the petitioned-for unit would impair efficient operations of the Districts and the disenfranchisement of the psychologists if their petition is

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<sup>12</sup>Section 3545(a) states:

(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.



rejected all persuade us that a separate unit is appropriate.<sup>13</sup>

The Districts claim that the creation of this unit consisting of only five employees would impair the efficiency of operations by requiring an extra series of negotiations.<sup>14</sup> However, the Districts' evidence in support of this claim goes only to potential loss of time devoted to their "major areas of responsibilities" by administrative personnel engaged in negotiations. While such a requirement undoubtedly would be burdensome, the Districts have not shown how this burden would actually impair their operations within the meaning of 3545(a).<sup>15</sup> As we noted in Antelope Valley Community College District, PERB Decision No.168 issued on this day, 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 bargaining.

Absent convincing evidence of a detrimental impact on the

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<sup>13</sup>See Palo Alto Unified School District (1/9/79) PERB Decision No. 84.

<sup>14</sup>There are currently three units in the District: two classified employee units and the certificated employees' unit.

<sup>15</sup>The Board takes notice that the Districts have, at one time, been willing to recognize a separate fourth unit of counselors of only four employees. Pleasanton Joint Elementary School District (9/12/77) EERB Decision No. 24.

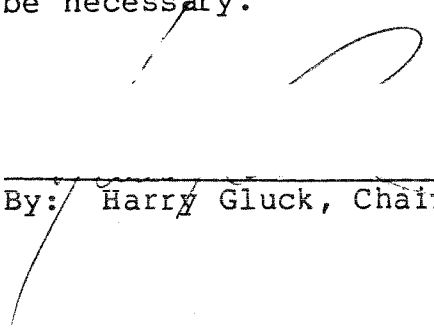
Districts' operational efficiency, there is no reason to disenfranchise, in effect, this group of employees.

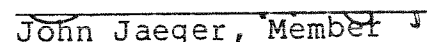
ORDER

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

(1) A unit consisting of school psychologists is appropriate for negotiating in the Pleasanton Joint School District and the Amador Valley Joint Union High School District, provided that an employee organization becomes the exclusive representative of the unit.

(2) If the above-mentioned Districts do not grant voluntary recognition to the Amador-Pleasanton School Psychologists Association, the regional director shall conduct a representation election in the unit found appropriate in this decision. Because the composition of the unit the Board has found appropriate is the same as that for which the Amador-Pleasanton School Psychologists Association has petitioned, no new showing of support by that organization will be necessary.

By:  Harry Gluck, Chairperson

 John Jaeger, Member

Member Tovar's concurrence begins on page 11.

Member Tovar, Concurring:

I concur in the result of this decision and agree with the discussion except as regards the suggestion that the AVTA might have filed a unit modification petition pursuant to PERB rule 33261(a)(1). I disagree with this suggestion for two reasons. First, as a practical matter it may have been impossible for AVTA to file a rule 33261(a)(1) petition, since AVTA would have had to submit a majority showing of support (PERB rule 33261(f)).<sup>16</sup> In this case, apparently all five psychologists had already indicated support for APSPA.

Second, I believe a petition pursuant to PERB rule 33261(a)(3) would have been appropriate. Such a petition does not require a showing of support. PERB rule 33261(a)(3) states:

A recognized or certified employee organization may file with the regional office a petition for unit modification pursuant to Government Code section 3541.3(e):

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<sup>16</sup>PERB rule 33261(f) states:

If the petition requests the addition of classification(s) or position(s) to an established unit pursuant to section (a)(1) above, it must be accompanied by proof of majority support of persons employed in the classification(s) or position(s) to be added. Proof of support is defined in Division 1, Section 32700 of these regulations.

(3) To add to the unit new unrepresented classifications or positions created since recognition or certification of the current exclusive representative;

. . . . .

In this case, the five psychologists, although not in a new classification, had become eligible for representation only after establishment of the bargaining unit, once the District had redesignated them non-management. This situation is more appropriately covered by rule 33261(a)(3) than rule 33261(a)(1). Rule 33261(a)(1), to the contrary, functions to discourage an employee organization from petitioning for recognition only in classifications in which it enjoys employee support and then picking up related eligible classifications after becoming exclusive representative, through a unit modification petition. Presumably this is why there is a new showing of interest requirement.

Also, unlike a rule 33261(a)(1) petition, which seems to be precluded once a petitioner files for recognition by the Arcadia decision, supra, there is no such limitation on a petition seeking to include newly eligible employees in the unit.

Irene Tovar, Member

Member Moore's dissent begins on page 13.

Barbara D. Moore, dissenting:

I find that a unit of five psychologists is inappropriate and would affirm the hearing officer's decision.

Section 3545(a) sets forth the standards for determination of appropriate units.<sup>1</sup> These standards require a balancing of all the listed criteria to determine whether a unit is appropriate. No one criterion can be singled out and the remaining criteria ignored.

Utilizing these criteria, I find the proposed unit inappropriate for several reasons. First, it is vital to consider the petitioned-for unit in the context of the representation configuration in the Districts. Placed in context, the psychologists share a strong community of interest with the existing certificated unit.<sup>2</sup> Second, establishing a

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<sup>1</sup>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. [Emphasis added.]

<sup>2</sup>As noted by the majority, the established overall certificated unit in the Districts, the Amador Valley Teachers Association (hereafter AVTA), includes regular and temporary contract teachers, special education teachers, librarians, nurses and counselors.

unit which contains only one classification, psychologists, will result in excessive fragmentation of units, a policy the Board has always sought to avoid. Finally, the small size of the unit exacerbates the excessive fragmentation of units thereby impairing the efficiency of the Districts' operations.

Not only do I disagree with the result reached by the majority, the decision is troublesome because of the confusion it engenders. The majority's method of finding a unit appropriate here is sharply inconsistent with that used in another more soundly reasoned decision issued this date, San Diego Unified School District, PERB Decision No. 170, where the Board found a unit of 341 hourly bus drivers to be inappropriate. Although the Pleasanton-Amador majority asserts that there are distinctions between this case and San Diego, these distinctions are spurious, obfuscate Board precedent upon which they rely, and give future parties no guidance in determining when the Board will find a unit to be appropriate in cases of this type.

The majority's decision here clearly flows from its belief that "rejecting APSPA's petition for recognition would effectively deny the psychologists' right to representation." (Majority's decision at page 4.) In the interest of assuring that the five psychologists obtain representation, the majority distorts how a unit is found to be appropriate. The majority's opinion looks only to the community of interest among the

five psychologists and ignores the problem of excessive fragmentation of units and the effect of the small size of the proposed unit on the efficient operation of the school districts.

In straining to find this unit appropriate, the majority shifts the burden of proving that a unit is appropriate from the employee organization to the Districts and apparently changes the standard of proof from preponderance of the evidence to clear and convincing evidence.

Heretofore, the party petitioning for a unit has had to establish its appropriateness pursuant to section 3545(a). Here, the Board turns the tables. With no finding that the petitioner has shown the unit to be appropriate, the majority states it will not deny the petition unless there is "convincing evidence in support of the Districts' claim that efficiency of its operations would be impaired, or that the unit would otherwise be inappropriate." (Majority's decision at page 4.) Thus the Districts must prove the unit inappropriate or the majority will grant the petition.

The majority also appears to establish a new and higher standard of proof. The typical standard of proof is the "preponderance of the evidence." Yet here the majority states:

Absent convincing evidence of a detrimental impact on the Districts' operational efficiency, there is no reason to disenfranchise, in effect, this group of

employees. [Pages 9-10, supra, emphasis added.]

Thus, the majority has not only shifted the burden of proof to the Districts, but it has changed the standard of proof by requiring the Districts to prove by "convincing" evidence that the proposed unit would impair its efficiency.<sup>3</sup>

Comparing the unit appropriateness criteria utilized by the majority in the instant case and that utilized by the Board in San Diego, supra, demonstrates the inconsistency of the Board's process for finding a unit to be appropriate and the problems with the majority's analysis herein. In both of these cases, the petitioned-for employees have a history of separate representation. In San Diego, monthly bus drivers and other full-time blue collar classified employees are already represented in an overall blue collar unit.

In both petitioned-for units, the employees might be disenfranchised if a separate unit were not allowed. The majority emphasized this possibility in the instant case using it to rationalize granting a tiny, fragmented unit. In San Diego the Board regretted the possibility that the hourly bus drivers might go unrepresented but did not let this factor

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<sup>3</sup>At page eight in its decision, the majority also points to the lack of "conclusive proof" submitted by the Districts to demonstrate that the petitioned-for unit would result in inefficiency to the Districts' operations. It is unclear if this establishes yet another standard.



deter it from considering the full range of statutory criteria it termed "relevant information." Ironically, the possibility of disenfranchisement appears much more likely in San Diego where there is no indication of interest in representation from the incumbent blue collar employee organization than in this case where the AVTA appeared and expressed on the record a willingness to represent the psychologists.

In both San Diego and Pleasanton-Amador, the Board acknowledges that the petitioned-for employees share a community of interest among themselves. Unlike the instant case, however, the Board in San Diego did not end the investigation into appropriateness there:

That the hourly drivers also have a community of interest among themselves need not be disproved but that does not end the inquiry into appropriateness of a unit. Every classification possesses a community of interest among its members. Janitors, undisputedly, have more in common with other janitors than they do with gardeners, but we have yet to find a separate unit of only janitors appropriate, absent unusual circumstances. The Educational Employment Relations Act requires that this Board consider, inter alia, the effect of its determination on the efficient operations of the employer. [Page 5, supra, emphasis added.]

Although, as pointed out in San Diego, the Board has yet to find a unit of janitors appropriate, the majority's decision in the instant case is accomplishing a similar anomaly, finding a single classification of five psychologists appropriate. To justify this, the majority focuses on the common functions of

psychologists and differentiates these functions from those performed by classroom teachers and ignores the large number of similar interests that psychologists share with other pupil support services personnel who are part of the existing unit.

Indeed, the majority admits that the larger community of interest was irrelevant to its considerations.

[I]rrespective of whatever community of interest the psychologists show with the existing certificated unit, the psychologists' own community of interest, the history of separate representation, the lack of conclusive proof that the petitioned-for unit would impair efficient operations of the Districts and the disenfranchisement of the psychologists if their petition is rejected all persuade us that a separate unit is appropriate.  
[Pages 8-9, supra, emphasis added.]

The majority insists that there is not conclusive proof that a unit of five psychologists would impair the efficiency of the Districts' operations; yet it refused to consider the relevant criteria, the larger community of interest and the problem of excessive fragmentation. These are the very criteria the Board in San Diego utilized to determine that the efficiency of the District's operations would be impaired if the petitioned-for unit were established. Only by ignoring these criteria can the majority here justify the psychologists' unit.

Considering San Diego and this case together, it is unclear whether the Board will look at a petitioned-for unit in

isolation or in the context of other units in place. The Board in San Diego held that the only way to determine whether a unit is appropriate is to look at the "relevant information" mandated by section 3545(a). I believe this is correct since I see no way to determine if there is fragmentation without looking at the number and composition of other units in the District.

On this point, the Board in San Diego considered its decision in Arcadia Unified School District (5/17/79) PERB Decision No. 93 where the Board stated that:

. . . when the only issue before the Board is whether one particular requested unit is appropriate, the Board must decide whether that proposed unit, standing on its own, meets the statutory criteria for an appropriate unit for negotiating. [Supra, at page 13.]

To distinguish Arcadia, the San Diego Board emphasizes that granting the requested unit will split the generic occupation of bus drivers into two separate units. In the instant case, the majority ignores the "relevant information" in order to find the psychologists' unit appropriate. The only apparent distinction between denying a unit in San Diego and granting a unit in Pleasanton-Amador is that in the former case the Board refused to split an occupation. I do not find this to be an appropriate basis but rather find simply that San Diego sets the proper standard.

Parties reading these cases together are left with confusion as to how to interpret Arcadia in the future. Indeed, although the majority asserts that it will decide these matters on a case-by-case basis, taking San Diego and this case together leaves the impression that with facts similar to these two cases, a petitioning organization can assume that any unit requested will be acceptable unless an occupation is split. In the instant case, although an occupation is not split, closely allied occupations are separated. The majority glosses over this fact by mentioning only the differences between teachers and psychologists without noting the strong similarities among psychologists and the other pupil support personnel in the overall certificated unit. An examination of these similarities reveals shared interests, shared duties and common supervision and demonstrates a strong community of interest between the psychologists and other members of the certificated unit.

Psychologists share many of the same tasks and have almost identical conditions of employment as other pupil support personnel now in the certificated unit. Psychologists' primary duties include diagnostic evaluations of special education students. They work with teachers, special education teachers, parents and students concerning student placements. This work intimately involves them with other employees already in the certificated unit who work with special education students.

Along with special education teachers, speech therapists, and the nurse, psychologists work as a regular part of the School Appraisal Team, a child study group which meets regularly to determine the appropriateness of assessment and placement of special education students. At team meetings, all of these employees share common supervision and direction by a site administrator.

Psychologists and counselors work together counseling special education students. Psychologists work with the nurse on any health-related problems of these pupils. They work with speech therapists in screening students with speech problems who may have special education needs. Psychologists and speech therapists work jointly on the summary of their assessment of the student. Psychologists also work closely with special education teachers in pre- and post-placement of special education students in various programs. Psychologists often support these teachers in intervention techniques in the classroom. Finally, psychologists have close involvement with regular teachers in referrals of students to special education programs. They contact the classroom teacher on a regular basis to assess the needs of the special education children.

Finally, psychologists, speech therapists, special education teachers and the nurse share common supervision and

evaluations by the Districts' director of special education and pupil support services. The director assigns both psychologists and speech therapists to school sites.

As noted by the hearing officer, all certificated employees have the same tenure system, are subject to the same layoff procedures and are evaluated pursuant to the Stull Act. Psychologists belong to the same state retirement system as regular classroom teachers and have similar credential requirements. Psychologists have a community of interest with the members of the overall certificated unit in the area of leaves, calendar, tenure, retirement and general qualifications.

The majority noted that psychologists work a different work year and hours than classroom teachers. They failed to mention, however, that psychologists work an extended work year similar to that of school counselors and share similar work hours with speech therapists, special education teachers and nurses.

In sum, similar working conditions, types of work, supervision, pay and benefits all demonstrate a compelling community of interest between the psychologists and other certificated employees.

In San Diego, the Board quoted its opinion in Sweetwater Union High School District (11/23/76) EERB Decision No. 4 at p. 11 which recognized that:

It is a legitimate concern that excessive fragmentation of negotiating units may

burden an employer with multiple negotiating processes and postures and with a variety of negotiated agreements difficult to administer because their provisions differ.

The Board in San Diego considered the problem of excessive fragmentation of units and expressed concern that employees performing the same work would be split into two units with two different representatives. The Board foresaw the potential for competing labor organizations to "whipsaw" the employer and to file unfair labor practice charges against an employer who seeks a similar set of employee policies for both groups of employees. The Board also found that management was placed under an unacceptable burden in attempting to manage employees doing the same work under different sets of personnel programs.

Yet, in the instant case, the majority has blithely passed over the very real problem for the Pleasanton-Amador Districts of excessive fragmentation of units. As noted previously, psychologists, along with other certificated personnel, receive common supervision and share similar and often identical work duties. The potential for "whipsawing" the employer or for disruption with two conflicting sets of employee practices is as great in the Pleasanton-Amador Districts as it is in San Diego. Pleasanton-Amador management is similarly placed under an unacceptable burden in the establishment of a separate unit composed only of psychologists.

As noted in the majority opinion, psychologists have traditionally been placed in an overall certificated unit.

However, in attempting to justify a separate psychologists' unit, the majority argues that the Board has deviated from this configuration in Arcadia, supra. Arcadia does not truly support the majority's decision since the Board there placed all pupil support services personnel in a separate unit. This is the first case where the Board has held that a single classification of pupil support services personnel is an appropriate unit.

I agree with the majority that size alone does not render a unit inappropriate. Nonetheless, the very small size of the proposed unit and the strong community of interest psychologists share with the overall certificated unit renders the proposed unit inappropriate in that it results in excessive fragmentation.

The Board in Gilroy Unified School District (7/20/79) PERB Decision No. 98, held that a unit of six children's center permit teachers would be inappropriate in that the small size of the unit would unduly fragment the negotiating unit and impair the efficiency of the District's operations. Like the psychologists in the instant case, the Board recognized that the children's center employees had a community of interest among themselves. The Board in Gilroy recognized, however, that these employees, as certificated personnel, also had a strong community of interest with the overall certificated unit.



The reasons for denying a separate children's center unit in Gilroy apply equally here. As in Gilroy, granting a small unit of five psychologists, when all remaining pupil support personnel and certificated teachers are in an overall unit, would unduly fragment the work force and adversely affect the efficiency of the Districts' operations. The evidence in the instant case establishes a strong community of interest between the psychologists and other pupil support personnel as evidenced by similar work functions, supervision, pay, tenure, retirement, leave, etc. Based on all the foregoing considerations, I cannot find the proposed unit to be appropriate.

Barbara D. Moore, Member

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Limited Party.

Proposed Decision  
(9/15/80)

On January 23, 1980 the Amador-Pleasanton School Psychologists Association (hereinafter APSPA) filed a request for recognition with the Pleasanton Joint School District and the Amador Valley Joint Union High School District (hereinafter

Districts).<sup>1</sup> The request sought a unit of all psychologists. No other employee organization intervened.

On March 7, 1980 the Districts denied the request doubting the appropriateness of the petitioned for unit. The Districts asserted that the psychologists should be included in the overall certificated unit and requested that a representational hearing be conducted pursuant to section 3544.5(a) of the Educational Employment Relations Act (hereafter EERA).

On April 21, 1980 the Amador Valley Teachers Association (hereinafter AVTA) requested permission to join the formal hearing as a limited party. The hearing officer granted the request on June 12, 1980. A formal hearing was held on June 18, 1980.

#### ISSUE

Whether a unit of psychologists is appropriate under Government Code section 3545.

#### FINDINGS OF FACT

The Pleasanton Joint School District and the Amador Valley Joint Union High School District are located in Alameda County. The Districts have six elementary schools, one

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<sup>1</sup>The Pleasanton Joint School District (K-8) and the Amador Valley Joint Union High School District (9-12) have separate school boards but share a common administration for the purposes of collective bargaining. The five psychologists are employed in the Pleasanton Joint School District. The Amador Valley Joint Union High School District does not employ psychologists.

intermediate school, four high schools and two adult schools. Total enrollment is approximately 10,013.<sup>2</sup>

The elementary district employs five psychologists, three reading specialists, approximately 10 to 12 special education teachers and four and six-tenths speech therapists. The high school district employs approximately 10 to 12 special education teachers, one nurse and one speech therapist. The high school district does not employ psychologists.

Psychologists' primary responsibilities include the assessment of special education students, counseling with students, working with parents, classroom teachers and special education teachers. The psychologists make recommendations as to the placement of the special education students in the elementary district.

The psychologists interact with the counselors before the placement of the special education students. They gather information pertaining to advancement and counseling of the students.

The psychologists work with the nurse if there is a health related problem with the special education students. They work with the speech therapists regarding the assessment and screening of students. The psychologists are involved with the

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<sup>2</sup>1979 California Public School Directory at pp. 52, 70, 71.

special education teachers in pre-placement and post-placement activities of the special education students.

The School Appraisal Team is a body that meets on a regular basis to determine the appropriateness of assessment and placement of students. The School Appraisal Team includes a representative of the special education teachers, a psychologist, a speech pathologist, an administrator, a nurse and parents of the child who is involved in the special education program.

The psychologists were previously designated as management employees in the Districts. In 1978 the psychologists were no longer considered as management employees. They were put on a separate salary schedule for 1978-79 and 1979-80 school years. The psychologists received the same salary increases as the certificated employees in the elementary district.

The psychologists work 192 days per school year. The regular classroom teachers work 179 1/2 days per school year.

The overall certificated unit includes regular contract teachers, temporary contract teachers, special education teachers, librarians, nurses and counselors.<sup>3</sup>

Most of the psychologists are assigned to two elementary schools that they work in two to three days a week. The psychologists can service the high school district on request.

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<sup>3</sup>Districts' Exhibit A.

The psychologists work with children in the elementary district on a daily basis. The psychologists contact the classroom teacher on a regular basis to assess the needs of the special education children.

Psychologists enjoy fringe benefits that are identical to all certificated employees in the overall certificated unit.

Ms. Virginia Ackely, Director of Special Services for the District, supervises and evaluates the psychologists, nurse, speech therapists and shares in the supervision of the special education teachers with a site administrator.

All certificated employees are evaluated pursuant to the Stull Act. The psychologists belong to the same state retirement system as do the regular classroom teachers. They have the same tenure system and are subject to the same layoff procedures as the other certificated employees. The psychologists have a community of interest with the members of the overall certificated unit in the area of leaves, calendar, tenure, retirement and general qualifications.

A psychologist acts as mediator between teacher and child, child and administrator and child and parent.

There are some minor differences between the classroom teachers and the psychologists such as the length of the workday and work year. They work an extended workday and 12 and one-half days per year longer than the classroom teachers.

There are currently three exclusive representatives in the District. The elementary and high school classified staffs share one exclusive representative. The elementary and high school districts have separate certificated exclusive representatives.

The Districts' negotiating team includes two principals, an assistant principal and the assistant superintendent of personnel, Mr. Laird. Mr. Laird's secretary records the minutes of each meeting. Other clerical staff are used to type the District's proposals. The negotiating team for the elementary district has frequent assistance from the business office.

The members of each exclusive representative are granted released time for negotiations with the Districts. Six teachers in the elementary district and four teachers in the high school district are granted released time for negotiations.

The Districts filed a cost claim for negotiations with the State of California. The approved claim for the high school district is \$4,125 and \$6,098 for the elementary district. As of June 18, 1980 the District had not been officially reimbursed by the State of California for their negotiations with the current exclusive representatives.

Mr. Laird, assistant superintendent of personnel, testified about the time spent by the Districts' negotiations team. On direct examination he testified:

Q. And if a psychologist bargaining unit were established the District could also apply to the State and would be reimbursed for the expenses incurred in negotiating with the psychologists unit, is that correct?

A. Well, they could for the expenses, but we're all here for a purpose and we couldn't get reimbursed for the time utilization problem.

Q. Does it have any effect on the educational function, the educational programs to assign four administrators to these negotiations sessions?

Yes.

Q. What sort of effect does it have?

A. Well, the operation of the school, they're using that time. It's very much the same as my own desk, during this type of procedure, piling up. They have other major areas of responsibilities which are being neglected at this time.

If a separate unit of five psychologists is found to be appropriate it would require a fourth set of negotiations.

#### CONCLUSIONS OF LAW

The APSPA contends that the only issue properly before the PERB is whether a unit of psychologists is appropriate.<sup>4</sup>

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<sup>4</sup>Section 3545(a) of the Government Code states:

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 Districts argue that the psychologists should be included in the overall certificated unit because of their community of interest with teachers and other pupil service personnel.<sup>5</sup> The Districts also contend that creating a unit of five psychologists would impair the efficiency of operations in the District.<sup>6</sup>

The Districts seek to modify the existing overall certificated unit by placing the psychologists in the same unit that is represented by AVTA.

California Administrative Code, title 8, part III, section 33260 contains the proper procedure for unit modification. Section 33260 states:

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the unit on the efficient operation of the school district.

<sup>5</sup>During the hearing the Districts argued that the psychologists share a substantial community of interest with the reading specialists, nurse, counselors, speech therapists, special education teachers and classroom teachers who are members of the overall certificated unit.

<sup>6</sup>The Districts refer to several PERB decisions where the psychologists, and other pupil services employees are appropriately included in a unit with other certificated employees. The Districts also pointed out that the PERB considers the effect of unit size on the efficient operation of a school district, e.g., Sweetwater Union High School District (11/23/76) PERB Decision No. 4; Los Angeles Unified School District (11/24/76) PERB Decision No. 5; Grossmont Union High School District (3/9/77) PERB Decision No. 11; Washington Unified School District (9/14/77) PERB Decision No. 27; Paramount Unified School District (10/7/77) PERB Decision No. 33; Pleasanton Joint Elementary District (9/12/77) PERB Decision No. 24; Arcadia Unified School District (5/17/79) PERB Decision No. 93.

33260. Policy. It is the policy of the Board to provide a single mechanism which shall be utilized for the modification of all established units. This system is designed to ensure that all parties to a modification are afforded notice and opportunity to express their views with regard to any proposed modification, and to provide assistance in the resolution of questions raised by the parties to a dispute regarding the modification of a unit.

The Board will not allow a unit modification which is based principally on employee dissatisfaction with the results of negotiations or the exclusive representative; nor will the Board permit a unit modification which impinges on the integrity of another established unit in which there is a different recognized or certified organization or which compromises the exclusivity of such certification.

No unit modification may be made by any procedure other than that contained in this Article. (Emphasis added.)

The Districts did not file a petition for unit modification in this case. However, there are limited circumstances whereby an employer may file a unit modification petition.<sup>7</sup> In this instance the circumstances simply do not apply.

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<sup>7</sup>California Administrative Code, title 8, part III, section 33261, (b), (1), (2), (3) states:

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for change in unit determination pursuant to Government Code section 3541.3(e):

(1) To delete classifications no longer in existence or which by virtue of

AVTA's original request for recognition did not include the psychologists. AVTA has not filed a petition for unit modification to add the psychologists to the overall certificated unit. AVTA participated as a limited party in this proceeding and indicated that they are willing and able to represent the psychologists as members of the overall certificated unit.<sup>8</sup>

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changes in circumstances are no longer appropriate to the established unit;

(2) To update classification titles where the duties are not changed sufficiently to cause deletion from the established unit;

(3) To make technical changes to clarify the unit description.

<sup>8</sup>California Administrative Code, title 8, part III, section 33261 states:

33261. Petition.

(a) A recognized or certified employee organization may file with the regional office a petition for unit modification pursuant to Government Code section 3541.3(e):

(1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit, provided such petition is filed at least 12 months after the date of said recognition or certification, except as provided in subsection (2) below;

(2) To add to the unit unrepresented classifications or positions which were

The PERB has consistently held that pupil services employees, including psychologists, are appropriately included in an overall certificated employee unit with the regular classroom teachers.

The facts of this case with respect to the duties of the psychologists as compared to the duties of the classroom teacher and other pupil services personnel do not differ significantly from the PERB's previous decisions.<sup>9</sup> Although

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included in an original request for recognition or intervention, but disputed as to management, supervisory or confidential status, provided a written agreement of all parties to submit the disputed classifications or positions pursuant to this Section 33261(a)(2) was filed with the regional office prior to recognition or certification of an exclusive representative in the unit in question;

(3) To add to the unit new unrepresented classifications or positions created since recognition or certification of the current exclusive representative;

(4) To divide an existing unit into two or more appropriate units;

(5) To consolidate two or more established units into one appropriate unit, provided neither of the conditions of Government Code section 3544.7(b) exist in any of the units to be consolidated. The "window period" provided for in Government Code section 3544.7(b)(1) is defined in Section 33020 of these regulations.

<sup>9</sup>See Los Angeles Unified School District (11/24/76) EERB Decision No. 5; Grossmont Union High School District (3/9/77)

the psychologists work a longer school year and day than the regular classroom teacher and are on a separate salary schedule these several distinguishing characteristics are not sufficient to establish a separate community of interest or a separate appropriate unit for the psychologists.

The extent to which the psychologists belong to one organization or another is one criterion (quoted, supra, p. 7). In this case, the psychologists have never been members or represented by AVTA.

The thrust of the Districts' efficiency of operations argument is that the cost and time spent for the Districts' negotiations with four units instead of three units would greatly impair the efficiency of the operations of the Districts. The Districts' claim with the State of California for reimbursement of negotiations costs has been approved. However, negotiating with four units instead of three units creates an extra set of negotiations which would involve more time being spent by the negotiating team and the psychologists in negotiations. The Districts indicate that the negotiating

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EERB Decision No. 11; Oakland Unified School District (3/28/77), EERB Decision No. 15; Pleasanton Joint Elementary School District, (9/12/77), EERB Decision No. 24; Placer Union High School District, (9/12/77), EERB Decision No. 25; Washington Unified School District (9/14/77) EERB Decision No. 27; Paramount Unified School District (10/7/77) EERB Decision No. 33.

team composition would not change with the advent of a unit of psychologists.

Additional clerical assistance would be needed to take minutes and type proposals for a unit of five psychologists as well as the other three units in the Districts.

Based on the experience with the three recognized units, it has taken many hours of time for the employee team members and the management team members. Considering both the evidence of inefficiency of operation and the community of interest criteria it is concluded that a unit of psychologists is not appropriate under the EERA.

#### PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this matter it is the proposed order that the Request for Recognition filed by the Amador-Pleasanton School Psychologists Association is hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on October 6, 1980 unless a party files a timely statement of exceptions and supporting brief within twenty (20) calendar days following the date of service of this 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 October 6, 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, part III, section 32305 (as amended).

Dated: September 15, 1980

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JOSEPH C. BASSO  
Hearing Officer