

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOLTVILLE UNIFIED SCHOOL DISTRICT,)	
)	Case No. LA-R-604
Employer,)	LA-UM-108
)	
v.)	
)	
HOLTVILLE TEACHERS ASSOCIATION/)	PERB Decision No. 180
CTA/NEA,)	
)	November 18, 1981
Employee Organization.)	
)	

Appearances: Kathryn B. Jansen for Holtville Unified School District; Charles R. Gustafson, Attorney for the Holtville Teachers Association/CTA/NEA.

Before Jaeger, Moore and Tovar, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on exceptions to the attached hearing officer's proposed decision filed by the Holtville Unified School District (hereafter District). The District, pursuant to PERB rule 33261(b)(1),¹ seeks to modify the certificated unit, represented by the Holtville Teachers Association, by

¹PERB rules are codified at title 8, section 31000 et seq. of the California Administrative Code. Section 33261 provides:

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(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition

designating the language, speech, and hearing specialist as a management employee as defined by Government Code subsection 3540.1(g)² and thus exclude her from the unit as required by Government Code subsection 3545(b)(1).³ The hearing officer determined the language, speech, and hearing specialist was not a management employee since she did not possess significant

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

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²The Educational Employment Relations Act is codified at section 3540 et seq. of the Government Code. Subsection 3540.1(g) provides:

"Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board.

³Subsection 3545(b)(1) provides:

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

responsibilities for either formulating District policies or for administering District programs.

The Board has considered the record as a whole and the proposed decision in light of the exceptions filed and hereby adopts the hearing officer's findings of fact and conclusions of law.

ORDER

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

The position of language, speech, and hearing specialist is not a management position within the meaning of Government Code subsection 3540.1(g) and is, therefore, included in the certificated unit.

PER CURIAM

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA



HOLTVILLE UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	Representation
)	Case No. LA-R-604
and)	LA-UM-108
)	
HOLTVILLE TEACHERS ASSOCIATION/CTA/)	<u>PROPOSED DECISION</u>
NEA,)	
)	(1/26/81)
Employee Organization.)	
_____)	

Appearances: Kathryn B. Jansen for Holtville Unified School District; Charles R. Gustafson, Attorney for the Holtville Teachers Association/CTA/NEA.

Before Dee Crippen, Hearing Officer.

INTRODUCTION

The Holtville Unified School District (hereafter District) has a student enrollment of approximately 1,839 at two elementary schools, one junior high school, one high school and a continuation school in the County of Imperial.¹

On December 20, 1979 the District, pursuant to PERB Rule 33260,² filed a unit modification petition with the

¹California Public School Directory (1980) State Department of Education, at p. 131.

²Rule 33260 provides as follows:

Policy. It is the policy of the Board to provide a single mechanism which shall be utilized for the modification of all

Public Employment Relations Board (hereafter PERB) to exclude the positions of Language, Speech and Hearing Specialist and School Nurse from the established certificated unit. On January 21, 1980 the Holtville Teachers Association/CTA/NEA (hereafter Association) filed its response in opposition to the District's petition.

The District contended that the Language, Speech and Hearing Specialist and the School Nurse were management employees and consequently the positions should be excluded from the certificated unit as required by Government Code section 3545(b)(1)3 of the Educational Employment Relations Act (hereafter EERA).

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 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. (Amended as of 6/14/79.)

³Government Code section 3545(b)(1) reads as follows:

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate

The Association contended that the positions were not management as the incumbents did not possess significant responsibilities for formulating district policies and administering district programs and should remain part of the overall certificated unit.

After an informal conference, resolution was reached on the position of School Nurse. It was determined that this position was not one of management and the position was therefore properly included in the overall certificated unit.

As no resolution was reached on the position of Language, Speech and Hearing Specialist, a formal hearing was held on September 17, 1980. Thereafter, simultaneous briefs were filed by the parties on November 28, 1980.

FINDINGS OF FACT

On November 11, 1976 a request for recognition filed by the Association pursuant to 3544.1 was granted by the Board of the Holtville Unified School District for a unit including:

All certificated employees,
except management, confidential and
supervisory employees.

unless it at least includes all of the
classroom teachers employed by the public
school employer, except management
employees, supervisory employees, and
confidential employees.

The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise noted.

Since recognition was granted to the Association, two negotiated agreements have been entered into by the parties.

A negotiated agreement is currently in effect between the Association and the District covering the period from July 1, 1978 until July 1, 1981.

The position of Language, Speech and Hearing Specialist has been included in the overall certificated unit since recognition was granted to the Association. The District's petition to exclude the positions of School Nurse and the Language, Speech and Hearing Specialist as management employees was the result of the governing board's action on November 15, 1979 approving the designations of School Nurse and the Language, Speech and Hearing Specialist in concept as management employees and directing the District Superintendent to file the petition to remove the positions from the unit.

The Association's response in opposition to the change in unit determination of both classifications stated that no change in circumstance had occurred since recognition in 1976 and that these classifications were properly included in the unit.

As previously noted, the position of School Nurse was determined to be properly included in the certificated unit. Therefore, this decision will deal only with the issue of whether or not the Language, Speech and Hearing Specialist is a management employee.

The Language, Speech and Hearing Specialist is responsible for evaluating both English and Spanish speaking children to determine the extent of any language, speech or hearing disorders. If a child is found to be deficient in any of these areas, therapy will be provided on either an individual or group basis. No teaching responsibilities are assigned to the position, as the position of Language, Speech and Hearing Specialist is a full-time one.

A communication aide is assigned to assist the Language, Speech and Hearing Specialist. The Language, Speech and Hearing Specialist's present communication aide was already employed by the District in another capacity, and was hired with the concurrence of the District Superintendent. The Language, Speech and Hearing Specialist stated that evaluating her communications aide would be her responsibility, but that she had not done so in the past. If she were dissatisfied with her aide's performance, she would have to take the matter up with the District Superintendent, who would have final authority on any disciplinary action to be taken. The procedure is essentially the same for all other certificated personnel who supervise aides.

The Language, Speech and Hearing Specialist receives her referrals for evaluation from parents, doctors, nurses and the classroom teachers. Her office is located in the Finley Elementary School and she has occasion to service all schools

in the District. She has interaction with the classroom teachers and shares their facilities. She is encouraged to discuss the children's progress with the classroom teachers and parents involved in her program.

An example of an area where the Language, Speech and Hearing Specialist has played a role in the development of District programs and the extent of that role, is as follows:

Under the direction of the Migrant Aide Coordinator, the Language, Speech and Hearing Specialist prepared and conducted six one-half hour workshops for the migrant aides in the District. Approval for this program was the responsibility of the Migrant Aide Coordinator who supervises all migrant aides in the District.

The incumbent Language, Speech and Hearing Specialist has been employed by the District for approximately 15 years. At time of hire, she was put on the teacher's salary schedule plus 10 percent. She received this additional amount until the 1978-79 school year. When she returned to school in September, she was told that she would no longer receive a 10 percent differential and that the salary differential would be frozen at the amount she was then receiving and become a constant amount. Although she has continued to receive her salary increases according to her placement on the negotiated teacher's salary schedule, she continues to receive the constant amount above the teacher's salary set in the 1978-79 school year, not 10 percent.

She is not responsible for the budget to administer her program. She receives her supplies in the same manner as a classroom teacher. She orders her supplies through the District Superintendent, who has the authority to approve or disapprove the request.

In conjunction with other professionals, she acts in an advisory capacity in the District and the community concerning children's speech, language and hearing deficiencies.

ISSUE

Whether the position of Language, Speech and Hearing Specialist is a management employee within the meaning of Government Code section 3540.1(g) and therefore properly excluded from the unit.

CONCLUSIONS OF LAW

Government Code section 3540.1(g) defines a "management employee" as "any employee in a position having significant responsibilities for formulating district policies or administering district programs."

The PERB has previously concluded that a management employee must possess significant responsibilities for both formulating district policies and administering district programs.⁴ The EERA's requirement that a management employee

⁴Lompoc Unified School District (3/17/77) EERB Decision No. 13, at 20-21.

"formulate district policies" requires that an employee possess discretionary authority to develop or modify institutional goals and priorities. "Administering district programs" requires authority to implement district programs through the exercise of independent judgment.⁵

The Language, Speech and Hearing Specialist has the responsibility for evaluating the language, speech and hearing difficulties of the children in the District and providing a program of therapy, if needed.

She has continued to maintain her professional competency in her field by attendance at conferences, workshops and monthly specialists meetings. She possesses the necessary credentials to perform her job, but does not possess an administrative credential, as one is not required for her position.

She has, in conjunction with other professionals, acted in an advisory capacity in the community as well as the school district on the needs of the children's language, speech and hearing problems.

Although sufficient evidence was presented at the hearing to attest to the competency of the incumbent's work performance, insufficient evidence was produced by the incumbent and the District to determine that the position is one of management.

⁵Hartnell Community College District (1/2/79) PERB Decision No. 81, at 13.

The incumbent is not responsible for the budget development necessary to run her programs. When monies or supplies are needed, she places a request with the District Superintendent in the same manner as other certificated employees. The District Superintendent has the authority to approve or disapprove all requests.

Reference was made to the training and supervision of a communication aide by the incumbent. Training and supervision of an aide does not make an employee management. Other certificated employees in the District have responsibilities for their aides. The incumbent may participate in the hiring and evaluation of her aide, but the final authority for hiring and firing of all the aides lies with the superintendent. She does not supervise any credentialed employees.

Participation of the incumbent in the preparation of workshops for migrant aides was clearly authorized by the Migrant Aide Coordinator who is a management employee of the District. The incumbent testified that she was unaware of how authorization was obtained to conduct and finance the program.

Although the incumbent must use independent judgment on the basis of what therapy may be needed for a particular child, she must obtain prior authorization from the District Superintendent if any expenditures of funds are needed to finance the therapy.

Discussion by the incumbent showed some dissatisfaction with her present salary situation. She stated that since the inception of collective bargaining under the EERA, she has been placed on the teacher's salary schedule, but has been denied the promised 10 percent additional salary amount escalating at the same rate as her raises. She had been receiving the additional 10 percent above her salary since she was employed by the District approximately 15 years ago. It was unclear from the record as to how much involvement, if any, the exclusive representative had in trying to help the incumbent rectify this situation, which she considers unjust. Since the additional pay amount of the incumbent had been effectuated 15 years ago, the fact that she receives an additional amount above the teacher's salaries will not be considered, as it appears to have been given as an incentive based on the incumbent's expertise in her field, not for managerial activities.

Considering the record as a whole, insufficient evidence was presented by the District or the incumbent to support the position that the Language, Speech and Hearing Specialist is a management employee pursuant to section 3540.1(g).

She does not have significant responsibilities for formulating and/or administering district programs. All of her decisions must be submitted to the District Superintendent for final approval.

Therefore, it is determined that the position of Language, Speech and Hearing Specialist is properly included in the unit.

PROPOSED ORDER

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

The position of Language, Speech and Hearing Specialist is not a management position within the meaning of Government Code section 3540.1(g) and is, therefore, included in the certificated unit.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on February 16, 1981 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 headquarters office in Sacramento before the close of business (5:00 p.m.) on February 16, 1981 in order to be timely filed. (See California Administrative Code, title 8, part III, section 33135.) 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, sections 32300 and 32305, as amended.)

Dated: January 26, 1981

Dee Crippen
Hearing Officer