

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OAKLAND UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	Case No. SF-UM-101
)	SF-UM-109
)	
and)	PERB Decision No. 182
)	
OAKLAND SCHOOL EMPLOYEES)	November 25, 1981
ASSOCIATION,)	
)	
Employee Organization.)	
)	

Appearances: Ember Lee Shinn, Assistant Legal Advisor for Oakland Unified School District; Michael Sorgen, Legal Advisor for Oakland Unified School District; Andrew Thomas Sinclair, Attorney (Sinclair and Clancy) for Oakland School Employees Association.

Before Gluck, Chairperson; Jaeger 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 Oakland School Employees Association and the Oakland Unified School District (hereafter District).

The Board has considered the record as a whole and the proposed decision in light of the exceptions filed and hereby adopts the attached hearing officer's decision and order as modified herein. With respect to the position of affirmative action purchasing manager, the Board reverses the hearing officer's decision and finds that that position is not

managerial within the meaning of Government Code section 3540.1(g).¹

DISCUSSION

Government Code section 3540.1(g) defines "management employee" as "any employee in a position having significant responsibilities for formulating district policies or administering district programs." The Board has previously held that a management employee must possess significant responsibilities both for the formulation of district policies and the administration of district programs. Lompoc Unified School District (3/17/77) EERB Decision No. 13, at 20-21.²

¹Educational Employment Relations Act is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise noted. Section 3540.1(g) reads:

"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.

²Prior to July 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

The two-prong test was deemed necessary to reconcile the fact that supervisorial employees also have significant responsibility for administering school policy yet are expressly authorized to organize representation units and engage in good-faith negotiations, a right denied managerial employees.

The "formulating of district policies" entails the discretionary authority to develop or modify institutional goals and priorities. The "administering of programs" involves the authority to implement district policies through the exercise of independent judgment. Hartnell Community College District (1/2/79) PERB Decison No. 81, at 13.

The hearing officer found that the affirmative action purchasing manager is responsible for planning, implementing and managing the District's affirmative action purchasing program. The Association excepts to the hearing officer's finding that the affirmative action purchasing manager possessed discretionary authority to formulate the District's affirmative action purchasing policy.

The record indicates that the primary responsibility of the affirmative action purchasing manager is to meet with members of the minority business community and inform them of the District's affirmative action purchasing program. He plans and organizes trade fairs and training programs for minority vendors. He monitors the amount of District funds that go to the purchase of minority services and reports his findings to the District's affirmative action purchasing advisory

committee. He trains departmental personnel in the area of affirmative action purchasing. On this basis, the hearing officer correctly concluded that the affirmative action purchasing manager possesses authority to implement the District's affirmative action purchasing program through the exercise of independent judgment.

However, there is insufficient evidence to establish that the incumbent possesses discretionary authority to develop or formulate District policy. On the contrary, the evidence strongly indicates that the District's affirmative action purchasing policy is set out in an administrative bulletin prepared by the District's board of education that the affirmative action purchasing manager has no authority to modify. Similarly, while the incumbent testified that he "manage[s] and implement[s] a District-wide policy," he stated that he has "never been called upon to develop one." Although the record indicates that the affirmative action purchasing manager was responsible for the drafting of a minority and female subcontracting clause to be included in District purchasing contracts, he testified that the language would have to be approved by four levels of supervisors. When asked whether he had the discretion to deviate from established policy on an individual basis, he responded that he "couldn't see a situation like that right now." Hence, there is no indication that the incumbent has the "discretion in the

performance of [his] job beyond that which must conform to [the] employer's established policy." Hartnell, supra, at 13.

We conclude that the affirmative action purchasing manager is not a management employee within the meaning of Government Code section 3540.1(g).

ORDER

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

1. The proposed order of the hearing officer as modified below is adopted as the order of the Board.
2. The affirmative action purchasing manager is not a management employee within the meaning of Government Code section 3540.1(g) and is, therefore, included in the classified white collar unit.

By: W. John W. Jaeger, Member

Harry Gluck, Chairperson

Member Tovar's Concurrence and Dissent begins on page 6.

Member Tovar, concurring and dissenting in part:

I concur in all aspects of the decision except the conclusion that the affirmative action purchasing manager is not a managerial employee. I would affirm the hearing officer's conclusion that he is a manager. In my view, the definition of management employee is applied by the majority too narrowly and too rigidly. It is undisputed that the affirmative action purchasing manager has significant responsibilities for administering the affirmative action purchasing program in one of the largest and most important school districts in California. Clearly this employee also has a significant role in policy development. The majority would decline to find him a manager, however, unless it can also be demonstrated that he possesses discretion to go beyond established board policy.

In reality, not all members of a management team have responsibilities for both administration and policy formulation to the same degree. Some executive functions may involve largely planning responsibilities, while others may emphasize responsibility for the implementation of policies and programs. The Board should avoid literal definition and overly strict application of the terms "formulate" and "administer." These are not, after all, entirely discrete functions. The focus should be on whether the employee is central in the process of developing and carrying out management decisions.

In this inquiry, both program formulation and administration responsibilities of the employee in question are necessarily examined. However, this dual focus should not be read to create a rigid two-prong test under which an employee must strictly satisfy both criteria in order to be determined to be a manager.

As the National Labor Relations Board has noted, "managerial status is not conferred upon rank and file workers or upon those who perform routinely, but rather it is reserved for those in executive type positions, those who are closely aligned with management as true representatives of management." Bell Aerospace, A Division of Textron, Inc. (1975) 219 NLRB 384 [89 LRRM 1664], citing General Dynamics Corporation, Convair Aerospace Division, San Diego Operations (1974) 213 NLRB 851 [87 LRRM 1705].

The majority opinion seems to suggest that a manager is one who has authority to deviate from established policy, and that the District has failed to prove that he has actually exercised such authority. I do not consider such discretion necessary, or even desirable for a manager to possess. Especially where a manager contributes significantly to the formulation of District policy, the policy should guide his implementation of the program. The exercise of authority in the interest of the employer should not be equated with a license to deviate from established policy.

In my view, the affirmative action purchasing manager is clearly a member of the management team and not a rank and file employee. He is a member of the affirmative action purchasing committee which develops policy in this area for the District. As program manager, he is the key employee for this affirmative action purchasing program. In this capacity he functions with considerable independence although, of course, he works closely with top executives of the District who have broader, general responsibilities. At the hearing, the Association did not present evidence to prove that the affirmative action purchasing manager was not a management employee. On the other hand, credible evidence was presented in support of his management status. The affirmative action purchasing manager himself testified that he regarded himself as a manager and that he did, in fact, manage and implement District policy. The evidence presented is sufficient, in my view, to support a finding that the affirmative action purchasing manager is a management employee, and I would so find.

By: Irene Tovar, Member



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

OAKLAND UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	Representation Case
)	Nos. SF-UM-101,
and)	SF-UM-109
)	
OAKLAND SCHOOL EMPLOYEES ASSOCIATION,)	PROPOSED DECISION
)	(1/15/81)
Employee Organization.)	
)	

Appearances: Sandra Woliver, Assistant Legal Advisor, for Oakland Unified School District; Michael Sorgen, Legal Advisor, for Oakland Unified School District; Colleen Clancy, Attorney (Sinclair and Clancy) for Oakland School Employees Association.

Before Joseph C. Basso, Hearing Officer.

PROCEDURAL HISTORY

On November 2, 1979, the Oakland Unified School District (hereinafter District) filed a petition for unit modification in the classified white collar unit.¹ The petition requests that the Secretary to the Coordinator of Student Services, the two Personnel Interviewers of the Classified Personnel Office be designated supervisory and that the Administrative Secretary, School Facilities be designated confidential.²

¹The Oakland Unified School District and the Oakland School Employees Association refer to the unit as the white collar unit. (Representation case file number is SF-R-258-C.)

²During the course of the hearing the District informed the hearing officer that the job title of the Secretary to the

On December 14, 1979, the Oakland School Employees Association (hereinafter Association) filed a petition for unit modification requesting the addition of seven positions to the established classified white collar unit.³

On December 3, 1979, the Association responded to the District's petition by opposing all the District's designations of the four employees in their petition.

On January 14, 1980, the District responded to the Association's petition by opposing the addition of the seven positions into the white collar unit. A formal hearing was held on July 30, 1980. The Association's brief was filed with PERB on November 10, 1980. The District's brief was filed with PERB on November 12, 1980.

ISSUES

1. Whether the following positions are supervisory and excluded from the classified white collar unit on that basis:

- a. Supervising Typist Clerk/Student Services;
- b. Workers' Compensation Claims Supervisor;

Coordinator of Student Services had been changed to the Supervising Typist Clerk of Student Services.

³The petition requests that the positions of Assistant Director of Community Relations, Workers' Compensation Program Supervisor, Affirmative Action Purchasing Manager, Administrative Secretary/Buildings and Grounds, Administrative Secretary/Department of Learning, Confidential Secretary/Classified Personnel and the Supervising Typist Clerk/Budget be added to the established white collar unit.

- c. Personnel Interviewers, Classified Personnel Office;
- d. Assistant Director of Community Relations;
- e. Administrative Secretary/School Facilities.

2. Whether the following positions are confidential and excluded from the classified white collar unit on that basis:

- a. Supervising Typist Clerk/Budget
- b. Administrative Secretary/Department of Learning

3. Whether the following position is management and excluded from the classified white collar unit on that basis:

- a. Affirmative Action Purchasing Manager

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Oakland Unified School District is located in Alameda County. The District has 64 elementary schools, 13 junior high schools, 3 middle schools, 10 high schools and 7 special schools.⁴ There are approximately 3,900 classified employees in the District.

During the course of the administrative hearing in this matter the District and the Association stipulated as "confidential" the following employees: Confidential Secretary/Classified Personnel; Administrative Secretary/Buildings and Grounds.

⁴1980 California Public School Directory at pp. 63-69.

The facts in the record substantiate that the Confidential Secretary/Classified Personnel and the Administrative Secretary/Buildings and Grounds perform the duties as indicated in Government Code section 3540.1(c).

Supervisory Issues

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

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

Section 3540.1(m) is written in the disjunctive; therefore, an employee need possess only one of the enumerated supervisory duties, or the effective power to recommend such action through the use of independent judgment.⁵

Personnel Interviewers (2)

There are nine classified bargaining units in the District. The Classified Personnel Office is organized on the basis of the contract for the classified bargaining units. The employees in the Classified Personnel Office handle absence

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Sweetwater Union High School District (11/23/76)
EERB Decision No. 4 at p. 12.

forms, notice of employment forms, assigning of substitute aides to the childrens' centers and interviews of prospective employees for classified positions in the District.

The Personnel Interviewers are assigned to the Classified Personnel Office. The Classified Personnel Office is administered by a Director of Classified Personnel, Ms. Loma Reno. The Classified Personnel Office employs 14 employees.

The Director formulates District policy, serves as a member of the negotiating team, ensures that all personnel practices are carried out and evaluates the Secretary and Personnel Assistant and reviews all other evaluations of employees in the office.

The Personnel Assistant is responsible for supervising the Personnel Interviewers, the Personnel Clerk, two Senior Clerk Typists and one Clerk Typist. She is authorized to sign all written documents, research grievances, make recommendations for District policy and serve as a substitute for the Director of Classified Personnel on the management's negotiating team.

According to the Association, the District petitioned to designate the Personnel Interviewers as supervisors on the ground that the Classified Personnel Office had been reorganized and that the Personnel Interviewers are now supervising a staff of clerical employees. The Association maintains that these employees were designated supervisory and

that the reorganization of the Classified Personnel Office was necessitated to exempt these employees from the unit.

The District maintains that the Personnel Interviewers' supervisory duties were not clearly defined prior to October 1979. According to the District, the reorganization now clearly defines the duties and responsibilities of the Personnel Interviewers.

The Personnel Interviewers interview District applicants for employment, transfer and promotion. They select substitute and temporary employees and assign them to administrators. They assign work and set priorities for the clerks in the Classified Personnel Office. The Personnel Interviewers do make effective recommendations for disciplinary action and resolve problems at the informal level. They can recommend the retention or release of subordinates. They have the authority to effectively recommend the hiring of subordinates.

Ms. Carolyn Young, Personnel Interviewer, hired both of the clerical people under her supervision.

The Personnel Interviewers are on a classified supervisory salary schedule. The supervisory salary schedule is based on an eight hour day. The rank and file salary schedule is based on a seven and one-half hour day. There is no other distinction between the supervisors' salary schedule and the rank and file salary schedule.

They formally evaluate each probationary employee under their direction. The evaluation report includes a recommendation on whether they be terminated or designated as permanent employees. The evaluation form is completed by the Personnel Interviewer and reviewed by the Director of Classified Personnel.

Since Personnel Interviewers possess several of the supervisory indicia enumerated in section 3540.1(m), it is found that they are supervisors within the meaning of the EERA.

Supervising Typist Clerk/Student Services

The Student Services Division consists of Lottie Lovett, supervisor of counseling and financial aid; Tom Tryon, supervisor of attendance and boundaries in the truancy reduction program; John Paul Schreter, supervisor of the psychologists; June Anderson, supervisor of the Oakland scholars and achievers program; and Beverly Schroder, consultant for pupil services. There are five clerks in the Student Services Division.

The Supervising Typist Clerk/Student Services schedules and assigns work to the clerks in the Student Services Division. She schedules break times and lunch periods. She also schedules vacation periods of the clerks. The Supervising Typist Clerk/Student Services adjusts employee grievances and recommends disciplinary action regarding the clerks in the office.

The Supervising Typist Clerk/Student Services interviewed a prospective employee for a Typist Clerk position in the Psychologists Division. She uses independent judgment as to whether or not the applicants are qualified for the position.

She has the authority and responsibility to monitor the workload in the department. She also has the authority to redistribute the workload of the clerks in the department.

She has the responsibility of assigning work, break times and lunch times for temporary employees (Kelly Girls) in the office. She can also effectively recommend that they be rehired or not rehired.

The Supervising Typist Clerk/Student Services works an eight hour day as compared to a seven and one-half hour day for the rank and file employees.

She spends 50 percent of her time supervising the clerks in the Student Services Office.

Since the Supervising Typist Clerk/Student Services possesses several of the supervisory indicia enumerated in section 3540.1(m), it is found that the Supervising Typist Clerk/Student Services is a supervisor within the meaning of the EERA.

Assistant Director of Community Relations

The Department of Community Relations interprets the work of the schools to the community and interprets the community's needs and wishes to the District. The Department of Community

Relations serves as an intermediary between the District and the community.

Ms. Electra Price is the Director of Community Relations for the District. She serves on the support staff of the Superintendent. Her main function is to act as liaison between the community and the superintendent. Ms. Price is the supervisor of Ms. Barbara Whitman who is the Assistant Director of Community Relations. The Community Relations Department also consists of a Senior Secretary and two Clerk Typists.

The Assistant Director of Community Relations is responsible for supervising the clerical staff of the office. She assigns and reviews the work of the clerical staff. She schedules vacation and leave time for the clerical staff. She has interviewed prospective employees for one of the clerk typist positions. Ms. Price and Ms. Whitman both agreed on who to hire for the clerk typist position.

The Assistant Director of Community Relations has not formally evaluated any employee in the office.

The Director spends approximately 60-70 percent of her time out of the office. The Assistant Director of Community Relations is responsible for the office during the absence of the Director. The Director considers the position of Assistant Director of Community Relations a supervisory position.

The Assistant Director of Community Relations is on the supervisory salary schedule.

Since the Assistant Director of Community Relations possesses several of the supervisory indicia enumerated in section 3540.1(m), it is found that the Assistant Director of Community Relations is a supervisor within the meaning of the EERA.

Workers' Compensation Claims Supervisor

The Workers' Compensation Claims Supervisor works in the Insurance Programs Office Department. The Insurance Programs Office Department is responsible for the maintenance of records and the administration of all claims for workers' compensation benefits. Mr. George Mouchette is the Manager of the Insurance Programs Department.

Mr. George Lowe, Workers' Compensation Claims Supervisor, represents the Oakland Unified School District at the Workers' Compensation Appeals Board hearings. Mr. Lowe has the sole authority to carry out settlement negotiations with attorneys and claimants regarding work-related accidents. There is a Claims Examiner and two clerical employees in the department.

The Workers' Compensation Claims Supervisor has not hired any employees in his department.

He has not participated in the resolution of any grievance nor has he participated in the disciplining of any employee in the department.

The Workers' Compensation Claims Supervisor is not aware of any District policy regarding overtime in his department. He

indicates that he is permitted to grant overtime to employees in his office but doesn't believe that overtime is necessary in the department.

He has not evaluated any employee in the office. The employees in his office have been evaluated by the Manager and the Claims Examiner.

He does not assign work on a regular basis to employees in the office other than on a routine basis.

He is also somewhat confused about what the definition of a supervisor is in his department. On direct examination he testified:

Q. Um-huh. How much of your time do you feel you spend at doing supervisory type work?

A. What do you mean by super -- define it please, because I really don't know what you mean by that.

Q. Well, I understand you don't know what I mean. I was getting more to what you meant by it. You evidently feel that you do supervisory work as well as doing actual work as Workers Comp. specialist.

A. When you say supervisory duties, do you mean stand over a person and make sure that they get the work completed and --

Q. Yes.

A. -- me, myself, do nothing --

Q. Assigning work, evaluating employees, fielding employee grievances, concerning yourself with personnel matters in your office as opposed to the Workers Compensation --

A. That is a minuscule part of my job duties. I feel that it's more administrative, policy making, than anything else.

The District has designated the Workers' Compensation Claims Supervisor as supervisory. During the course of the hearing an attempt was made by the District to elicit testimony to indicate that the position may be a management position. The record does not indicate that the Workers' Compensation Claims Supervisor performs any of the responsibilities for formulating District policies or administering District programs as defined in Government Code section 3540.1(g).

Since the Workers' Compensation Claims Supervisor does not possess any of the supervisory indicia enumerated in section 3540.1(m), it is found that the Workers' Compensation Claims Supervisor is not a supervisor within the meaning of the EERA and is included in the classified white collar unit.

Administrative Secretary/School Facilities

At the hearing on August 18, 1980, the District amended its unit modification petition to show that the Administrative Secretary/School Facilities was a confidential position through February 1980 and is a supervisory position thereafter.

The Administrative Secretary/School Facilities position is in the Office of Capital Planning and School Construction. The acting Senior Architect is the immediate supervisor of the Administrative Secretary/School Facilities.

The Administrative Secretary/School Facilities interviews prospective candidates for job vacancies in her office. She

effectively recommends the hiring of employees in the School Facilities Office.

She assigns work to the clerical staff in the office. She schedules vacation time for the clerical employees in the office.

She has never formally evaluated a clerical employee under her direction. No evaluation report was submitted as evidence to indicate that she formally evaluates the clerical employees in the office.

The Administrative Secretary/School Facilities does not adjust grievances at the formal level but has participated in reprimanding an employee on an informal level in the office.

Approximately 70-80 percent of her time is spent supervising the clerical employees under her direction. She works an eight hour day as compared to a seven and one-half hour day for the rank and file employee in the white collar unit.

The PERB itself has held:

It is well established that an employee need not possess all of the enumerated functions to be a supervisor.⁶ Rather the performance of anyone of the enumerated sections or the effective power to recommend such action, exercising independent judgment, is sufficient to make one a supervisor within the meaning of the Act.⁷

⁶Sweetwater Union High School District, supra, at p. 12.

⁷San Diego Unified School District (2/18/77)
EERB Decision No. 8 at p. 9.

Since the Administrative Secretary/School Facilities possesses several of the supervisory indicia enumerated in section 3540.1(m), it is found that the Administrative Secretary/School Facilities is a supervisor within the meaning of the EERA.

Confidential Employee Issues

In Sierra Sands Unified School District (10/14/76)

EERB Decision No. 2, the Board set forth its general commentary on Government Code section 3540.1(c) which defines the term "confidential employee" as "any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations." The Board held that an employer should be allowed a nucleus of individuals to assist the employer in its employer-employee relations. Further, the employees who are designated as "confidential employees" are not to be considered "public school employees" within the meaning of the Act. Finally, the Board held that the employer's right to the undivided loyalty of a nucleus of staff designated as "confidential" outweighs that inherent denial of representation rights of those employees designated as "confidential."⁸

⁸Fremont Unified School District (12/16/76) EERB Decision No. 6 at p. 10.

Administrative Secretary/Confidential/Division of Learning

Shirley Sawyer is the Administrative Secretary/Confidential/Division of Learning to Dorothy Kakimoto, Planner for the Division of Learning. Dorothy Kakimoto acts as an Administrative Assistant to Georgia Williams, Director of the Division of Learning.

The specific duties of the Planner for the Division of Learning are the development of curriculum and instructional programs and she is also involved in budget proposals for the Division of Learning.

She is a member of the administrative cabinet in the absence of Mrs. Williams. Ms. Kakimoto has been involved in calendar negotiations with the various employee organizations in the District. She reviews employee proposals and makes recommendations to the Deputy Superintendent, the cabinet and the negotiating team. She is responsible for programs and District policies regarding teacher pre-service days, conference days and planning days. She has also made recommendations regarding teacher layoffs for the 1980-81 school year. She analyzes the budget and makes recommendations to the negotiating team for the District.

The Planner serves on the disciplinary appeals panel for classified employees in the District. She participates in the writing of the panel's opinion and submits the written opinion

to the Administrative Secretary who types and delivers the decision to the Superintendent of the District.

The Administrative Secretary/Confidential/Division of Learning handles most of the correspondence for the Planner. She maintains most of the files for the Planner. She has access to and handles files which contain materials relating to confidential employer-employee information about certificated employees. She has access to the Planner's confidential file and maintains her own confidential file as well in the Division of Learning. She types confidential memoranda for the Planner of the Division of Learning.

The position of Administrative Secretary/Confidential/Division of Learning is a "confidential employee" within the meaning of the EERA.

Supervising Typist Clerk/Confidential/Budget Office

The Supervising Typist Clerk/Confidential/Budget Office is the secretary to the Chief Budget Analyst within the budget department of the District. The Chief Budget Analyst is in charge of the entire Budget Office staff. He plans and supervises all phases of the development of the District budget. He reports to the Business Manager and Controller.

Mr. Blake, Chief Budget Analyst, is not a department head and would not be the person to receive a level one grievance. He has not participated in negotiations with any of the exclusive representatives and is not a member of management's

cabinet. His chief purpose is to prepare cost analysis of exclusive representatives' bargaining proposals. The information he uses is available to the public. The employees in the Budget Office do not necessarily know the reasons for the cost analysis for the employer and the exclusive representative. Mr. Blake has the key to a file which contains confidential information. Mrs. Buchanan, the Supervising Typist Clerk/Confidential/Budget Office, does not have a key to the file and she would have to justify any request to view the file with Mr. Blake.

Mrs. Buchanan sees and types memoranda requesting other persons to gather data for negotiating. Mrs. Buchanan performs routine clerical duties in the Budget Office. She does not have access to confidential information that would jeopardize the employer's position at the bargaining table with the exclusive representatives.

Since the Supervising Typist Clerk/Confidential/Budget Office does not possess any of the confidential indicia enumerated in section 3540.1(c), it is found that the Supervising Typist Clerk/Confidential/Budget Office is not a confidential employee within the meaning of the EERA and is included in the classified white collar unit.

Affirmative Action Purchasing Manager

A "management employee" is defined in Government Code section 3540.1(g) as "any employee having significant

responsibilities for formulating district policies or administering district programs." Although the statute is written in the disjunctive, the Board has previously concluded that a management employee must possess significant responsibilities for both formulating district policies and administering district programs.⁹

The "formulating of district policies" requires that an employee possess discretionary authority to develop or modify institutional goals and priorities.¹⁰ The "administering of district programs" requires authority to implement district programs through the exercise of independent judgment.¹¹

As Affirmative Action Purchasing Manager, the incumbent is responsible for planning, implementing and managing the District's affirmative action purchasing program. He trains department personnel in affirmative action purchasing program, policies and procedures. He represents the District with public and private organizations that are interested in seeking out and assisting minority vendors to compete on an equal basis with other vendors who do business with the District. He plans and organizes trade fairs for minority suppliers. He also

⁹Lompoc Unified School District (March 17, 1977) EERB Decision No. 13 at p. 20-21.

¹⁰Hartnell Community College District (January 2, 1979). EERB Decision No. 81 at p. 13.

¹¹Id., at 13.

plans, organizes and conducts training programs for minority suppliers in public agency purchasing practices and procedures. The Affirmative Action Purchasing Manager serves on the District's affirmative action purchasing advisory committee and is responsible for implementing the committee's recommendations.

He has the authority to recommend solely changes to improve the affirmative action purchasing program. He reports directly to the superintendent on issues which involve the implementation or modification of any policy within his own department.

He plans and implements recordkeeping and reporting systems that affect the program.

The Outreach Program is a major thrust of his job. He is to maintain open lines of communication with the female community and the minority business community.

He monitors and evaluates the buyers for the District. The buyers report to him on a monthly basis the total number of purchases for that reporting period. The buyers fill out forms which indicate how much money was spent according to ethnic groups. These reports show the percentage of dollar amounts that went to minority or female groups.

The Affirmative Action Purchasing Manager has written a pamphlet entitled, "How to do Business with Oakland Schools."

The book describes how a potential supplier for the District can conform to the District requirements.

The record indicates significant responsibilities for formulating and administering District policy with respect to the Affirmative Action Purchasing Department. The position of Affirmative Action Purchasing Manager is a "management employee" within the meaning of the EERA.

PROPOSED ORDER

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

1. The Personnel Interviewers, Supervising Typist Clerk/Student Services, Assistant Director of Community Relations, Administrative Secretary/School Facilities are supervisory employees within the meaning of Government Code section 3540.1(m) and are, therefore, excluded from the classified white collar unit.

2. The Administrative Secretary/Confidential/Division of Learning is a confidential employee within the meaning of Government Code section 3540.1(c) and is, therefore, excluded from the classified white collar unit.



3. The Affirmative Action Purchasing Manager is a management employee within the meaning of Government Code section 3540.1(g), and is, therefore, excluded from the classified white collar unit.

4. The Workers' Compensation Claims Supervisor is not a supervisory employee within the meaning of Government Code section 3540.1(m) and is therefore included in the classified white collar unit.

5. The Supervising Typist Clerk/Confidential/Budget Office is not a confidential employee within the meaning of Government Code section 3540.1(c), and is, therefore, included in the classified white collar unit.

Pursuant to California Administrative Code, title 8, part III, section 32305, this proposed order shall become final on February 4, 1981 unless a party files a timely statement of exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief must actually be received by the Executive Assistant to the Board at the Headquarters Office in Sacramento before the close of business (5:00 p.m.) on February 4, 1981 in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, sections 32300 and 32305, as amended.

Date January 15, 1981

  _____
Joseph C. Basso
Hearing Officer