STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANAHEIM CITY SCHOOL DISTRICT, Employer, and ANAHEIM ELEMENTARY EDUCATION ASSOCIATION, CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT, CTA/NEA, Employee Organization.	PERB Decision No. 349 September 30, 1983 Case No. LA-AC-6 (LA-R-159)
CENTRALIA SCHOOL DISTRICT, Employer, and CENTRALIA EDUCATION ASSOCIATION, CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT, CTA/NEA, Employee Organization.	Case No. LA-AC-7 (LA-R-160)
MAGNOLIA SCHOOL DISTRICT, Employer, and MAGNOLIA EDUCATOR'S ASSOCIATION, CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT, CTA/NEA, Employee Organization.	Case No. LA-AC-8 (LA-R-199)

SAVANNA SCHOOL DISTRICT, Employer, and SAVANNA DISTRICT TEACHERS ASSOCIATION, CTA/NEA Employee Organization, and TEACHERS UNITED UNISERV UNIT, CTA/NEA, Employee Organization.	Case No. LA-AC-9 (LA-R-110)
ANAHEIM UNION HIGH SCHOOL DISTRICT, Employer, and ANAHEIM SECONDARY TEACHERS ASSOCIATION, INC., CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT, CTA/NEA, Employee Organization.	Case No. LA-AC-10 (LA-R-94A)

Appearances: A. Eugene Huguenin, Jr., Attorney (California Teachers Association) for Anaheim Elementary Education Association, CTA/NEA, Centralia Education Association, CTA/NEA, Magnolia Educator's Association, CTA/NEA, Savanna District Teachers Association, CTA/NEA, Anaheim Secondary Teachers Association, Inc., CTA/NEA and Teachers United Uniserv Unit, CTA/NEA; David G. Miller, Attorney for Anaheim City School District; Kyle D. Brown, Attorney (Hill, Farrerd Burrill) for Anaheim Union High School District; Steven J. Andelson (Atkinson, Andelson, Loya, Ruud & Romo) for Centralia School District, Magnolia School District and Savanna School District.

Before Gluck, Chairperson; Jaeger and Morgenstern, Members.

DECISION

GLUCK, Chairperson: The Districts[1] and the respective exclusive representatives of their certificated employees, each a chapter of the California Teachers Association, except to an administrative law judge's (ALJ) denial of the Chapters' individual petitions to establish the Teachers United Uniserv Unit, CTA/NEA (TU) as the exclusive representative in their place. The ALJ's proposed decision is attached hereto.

THE PARTIES' EXCEPTIONS

The Districts do not except to the dismissal of the petitions, but do challenge some of the ALJ's findings and conclusions, principally, his failure to: (1) require that nonmembers be eligible to vote on the question of the proposed transfer of jurisdiction and that such an election be conducted by the Public Employment Relations Board (PERB); (2) find that the in-house elections conducted among chapter members were predicated on misleading and inaccurate information furnished by the chapters to the voters; (3) find that the petitions unlawfully seek the creation of a multi-District bargaining unit without the approval of the employees; and (4) find that the ambiguity of the "opt-out" provision of the agreement with TU was fatal to the petition.

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[1]By "Districts" we refer to the five districts which are parties to this proceeding.

The chapters except to the dismissal of their petitions and the ALJ's findings: (1) that TU may not remain the exclusive representative of employees belonging to chapters which opt-out of the agreement; (2) that the action of the chapters was an "affiliation" with TU and, therefore, not covered by the phrase "transfer of jurisdiction" found in subsection 3541.3(m) of the Educational Employment Relations Act (EERA)[2] and (3) that their petitions must be conditioned upon pertinent amendments to the chapters' respective bylaws.

DISCUSSION

PERB's jurisdiction in this case is necessarily predicated on a finding that the attempted arrangement between each of the local chapters and TU constitutes a "merger, amalgamation, or transfer of jurisdiction" between the organizations. The word "affiliation" -- certainly known to the Legislature -- does not appear in subsection 3541.3(m). But, we do not find this omission an impediment to our resolution of the issues raised

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[2]The EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

Subsection 3541.3(m) which sets out powers of the Board reads:

> (m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

here. To the contrary, we find it germane to the conclusions we reach.

"Affiliation"[3] does not necessarily imply or entail any significant alteration of the identity or character of the affiliating organization. Thus, the mere act of affiliation does not raise, per se, any legal question as to whether the organization is still the one previously chosen by the employees as their representative and therefore entitled to continued certification. The omission of the word "affiliation" thus arguably reflects the legislative view that such action is a matter of private concern to the members of the affected organizations best left to their discretion and control.

However, the merger or amalgamation[4] of the exclusive representative and another organization necessarily results in

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[3]"'Affiliate with' is defined as to receive on friendly terms; to associate with; to be intimate with; to sympathize with; to consort with; and to connect and to associate with. Wolck v. Weedin, C.C.A. Wash., 58 F.2d 928, 930. But 'affiliated' does not bear construction that an affiliated organization is identical with or covered by parent organization with which affiliated. People v. Horiuchi, 114 Cal.App. 415." Black's Law Dictionary (Revised 4th Ed. 1968), p. 80.

[4]"Merger" is defined as the fusion or absorption of one thing into another where the least important ceases to have independent existence. Black's Law Dictionary, supra, p. 1140.

"Amalgamation" is defined as the joinder for a single body of two or more associations, organizations, or corporations as to form a homogeneous whole or new body. Black's Law Dictionary, supra, p. 104.

the termination of the former's existence and the creation of a new organization which may never have been considered by the unit employees as its future bargaining agent and has never been chosen by them for that purpose. That the new organization may retain certain characteristics of the incumbent may be of significance in deciding the issue of certification, but this does not alter the fact that an organizational change has taken place.

One need not look for a specific definition of the phrase "transfer of jurisdiction" to understand its meaning in the context of these proceedings. Certainly, the Legislature did not intend that PERB assert its regulatory authority over an organization's internal decisions which have no necessary bearing on rights or obligations established by the Act.[5] For example, a decision by a national organization to transfer from one affiliated local to another the jurisdiction to organize a particular group of workers is well beyond the range of PERB's powers of intervention. Similarly, the desire of the members of the exclusive representative to transfer its representational jurisdiction to the organization with which it affiliated is a matter over which we normally have no direct or immediate say. However, that desire, even when expressed through the members' decision to effect such a transfer, cannot

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[5]Los Angeles Community College District (Jules Kimmett) (10/19/79) PERB Decision No. 106.

itself dissolve existing statutory bargaining rights or create new ones. It is by the request for a PERB-ordered change of certification arising out of that transfer of jurisdiction that subsection 3541.3(m) is called into play and PERB's authority to consider and decide the "rights, privileges, and duties of an employee organization" becomes operative.

Ultimately, then, disposition of these petitions rests on the answers to three questions:

1. Is TU "an employee organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relationship with the school employer"?[6]

2. If so, may PERB, in light of the current exclusive representative status of each chapter, certify TU as the exclusive representative of the Districts' employees except in accordance with EERA policy governing timeliness of decertification proceedings?[7]

3. If yes, should PERB certify TU under the circumstances here?

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[6]EERA subsection 3540.1(d).

[7]EERA subsection 3544.7(b) requires PERB to dismiss petitions for decertification where there is a collective bargaining agreement in effect unless filed within the stated "window period" or when recognition of the incumbent was granted by the public school employer within the previous 12 months.

TU's identity: TU's bylaws provide that members of the various locals, as well as the locals themselves, can have membership in the new organization. There is nothing in the record to indicate that the bylaws include restrictions or limitations on membership which might arguably remove TU from coverage of EERA's definition of an employee organization. There is no dispute, nor could there be, that TU has as its primary purpose, the representation of public school employees in their relationship with their public school employers. We conclude, accordingly, that TU is an employee organization within the meaning of the Act.

Does EERA policy applicable to decertification petitions apply? Normally, a change of exclusive representative occurs as a consequence of a decertification proceeding and employee election.[8] However, the existence of subsection 3541.3(m) makes it clear that the Legislature did not intend that decertification be the sole means by which a change in representation can be accomplished.

PERB has adopted no rule or regulation prescribing when "issues relating to rights, privileges and duties of an employee organization in the event of a . . . transfer of jurisdiction"[9] may be raised. By its restraints against

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[8]Though not relevant to the facts here, a change may also result from a properly filed and approved severance petition, although EERA does not specifically refer to such a process.

[9]EERA subsection 3541.3(m), supra.

attempts to remove an incumbent, the Act seeks to minimize the possibility of a destabilization of the existing bargaining relationship and its attendant potential for harsh confrontation between employer and employees.[10] But the nature of the jurisdictional changes contemplated by subsection 3541.3(m) is readily distinguishable from that involved in decertifications and is pertinent to the matter of when such petitions may be filed. In subsection 3541.3(m) cases, there is necessarily an affinity between the incumbent organization and its proposed successor. There may be substantial overlap in the leadership or members. There is unlikely to be, if ever, the rivalry or hostility that characterizes the relationship between an incumbent and an organization seeking decertification or severance and which can lead to the conditions which the Act's time bars are designed to prevent. Where there is agreement between the incumbent and the intended successor to seek a transfer of certification and where some continuity in the character of representation may be anticipated, similar concerns seem unnecessary.[11] We

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[10]Bassett Unified School District (1/30/79) PERB Order No. Ad-57, vacated by the Board on reconsideration for other reasons. See Bassett Unified School District (3/23/79) PERB Order No. Ad-63.

[11]Here, for example, the arrangement between TU and the various locals provides for substantial continuity of those conditions which impact on the stability of current management-employee relationships. Local members will belong to TU and will serve on its governing body and bargaining

conclude that petitions arising out of subsection 3541.3(m) need not be subject to the time limitations applicable to petitions for decertification or severance and, in consideration of the facts here, we find that the petitions were timely filed.

Should TU be certified?

We find the District's contention that nonmembers must be allowed to vote on a change in certification in a PERB-conducted election to be meritorious. Although we acknowledge the thread of organizational continuity that winds through the proposed arrangement between TU and the chapters, the opportunity of nonmembers to participate (or voluntarily not to participate) in the change of their exclusive representative is so fundamental in the EERA scheme that we can presently envision no acceptable process which forecloses its exercise. Nonmembers can and do vote in representation elections and undoubtedly some vote for representation. To assume they have no interest in a transfer of bargaining rights is unwarranted. The Legislature, in dealing with the matter of "free riders", limited itself to providing for the negotiation

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committees. Each unit's bargaining policy would be formulated by a six-member committee of which three members would be from that unit. Ultimately, each local's members would ratify or reject proposed agreements and only the locals could call strikes. By our reference to this provision, we do not intend to imply that strikes are lawful or unlawful; it is made solely in the context of our discussion of continuity.

of service fees.[12] It has not called for forfeiture of nonmembers' statutory right to participate in representation elections. Certainly, that right cannot be defeated by the action of coworkers simply because they have chosen to become members of the incumbent representative.

Further, we do not consider it appropriate that a question of certification be resolved through elections conducted by parties to the proceedings and particularly by those with so direct and vital an interest in the outcome as is the case here. The conduct of an election to determine which organization, if any, shall represent the employees in an established bargaining unit is reserved exclusively to the Board.[13]

The District also contends that the effect of the provision permitting any chapter to "opt out" of its relationship to TU was misrepresented to the voters, thus invalidating the election results.[14] We find the District without standing to

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[12]EERA subsections 3540.1(h) and 3540.1(i) and section 3546. See also King City Joint Union High School District (3/3/82) PERB Decision No. 197.

[13]EERA subsection 3541.3(c) and section 3544.7.

[14]Petitioners claim that the provision is intended only to permit a chapter to withdraw from its relationship with TU and that the exercise of the option would not itself effect certification. The ALJ was concerned that the provision

raise this issue. In California School Employees Association and its Shasta College Chapter #381 (Parisot) (1/31/83) PERB Decision No. 280, we distinguished Kimmett, supra, fn. 5, from the situation in which the organization's internal operations arguably impinged on an employee's rights granted by EERA, holding that in such event PERB was obligated to accept jurisdiction. But the rights we referred to were those granted to employees by section 3543 to participate in organizational activities of their own choosing for purposes of representation or to refrain from so doing. The employer, of course, enjoys no such right. Nor may it act as the self-appointed "protector" of those employee rights. Indeed, to attempt to act in that manner might well constitute a violation of its implied duty to refrain from those actions made unlawful by subsection 3543.5(d).[15]

The Districts' contention that the changes in certification would, in effect, create a multi-employer bargaining unit is

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carries the potential for confusion as to bargaining rights and obligations in the event of its implementation and so muddies the concept of exclusivity as to be incompatible with EERA's principles.

[15]Subsection 3543.5(d) reads:

> It shall be unlawful for a public school employer to:
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> . . . . . .
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> Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

simply not supported by the record. TU denies that it intends such a result, but it is not necessary to accept its testimony as conclusive. The petitions seek separate certification of TU in each unit. How TU would conduct itself if the petitions were granted is a matter of its compliance with the good-faith responsibilities imposed by subsection 3543.6(c).

The Districts' argument that any chapter may dominate the others through TU is speculative and attempts to address the legality of TU's future negotiating practice rather than its legal right to act in that capacity.

The Districts' exceptions to the in-house election which have not been specifically addressed are mooted since by our Order we vacate the ALJ's proposed decision in its entirety.

Because we find that the petitions here seek the transfer of certifications to a different organization and because nonmembers, as well as chapter members, have not had the opportunity to vote in a PERB-conducted representation election as is their right, we decline to certify TU as the exclusive representative of employees in any of the Districts made party to these proceedings. Because the petitions before us request direct certification of Teachers United Uniserv Unit, CTA/NEA, and fail to request that PERB conduct representation elections among the various unit employees, we dismiss them, but with leave to amend in accordance with our findings and conclusions.

ORDER

Upon the foregoing Decision and the entire record in this case, the petitions filed in Case Nos. LA-AC-6 (LA-R-159); LA-AC-7 (LA-R-160); LA-CA-8 (LA-R-199); LA-AC-9 (LA-R-110); and LA-AC-10 (LA-R-94A) are hereby DISMISSED, with leave to amend.

Members Jaeger and Morgenstern joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ANAHEIM CITY SCHOOL DISTRICT, Employer, and ANAHEIM ELEMENTARY EDUCATION ASSN., CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT/CTA/NEA, Employee Organization.	)	Case No. LA-R-159 AC-6
CENTRALIA SCHOOL DISTRICT, Employer, and CENTRALIA EDUCATION ASSN., CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT/CTA/NEA, Employee Organization.	)	Case No. LA-R-160 AC-7
MAGNOLIA SCHOOL DISTRICT, Employer, and MAGNOLIA EDUCATOR'S ASSN., CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT/CTA/NEA, Employee Organization.	)	Case No. LA-R-199 AC-8

SAVANNA SCHOOL DISTRICT, Employer, and SAVANNA DISTRICT TEACHERS ASSN., CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT/CTA/NEA, Employee Organization.	Case No. LA-R-110 AC-9
ANAHEIM UNION HIGH SCHOOL DISTRICT, Employer, and ANAHEIM SECONDARY TEACHERS ASSN., INC., CTA/NEA, Employee Organization, and TEACHERS UNITED UNISERV UNIT/CTA/NEA, Employee Organization.	Case No. LA-R-94A AC-10 PROPOSED DECISION ON PETITION FOR TRANSFER OF JURISDICTION (5/24/82)

Appearances: A. Eugene Huguenin, Attorney at Law, for Anaheim Elementary Education Association, CTA/NEA, Centralia Education Association, CTA/NEA, Magnolia Educator's Association, CTA/NEA, Savanna District Teachers Association, CTA/NEA, Anaheim Secondary Teachers Association, Inc., CTA/NEA, and Teachers United UniServ Unit, CTA/NEA; Steven J. Andelson, Attorney at Law, Atkinson, Andelson, Loya, Ruud and Romo for Centralia, Magnolia and Savanna School Districts; David G. Miller, Esq., for Anaheim City School District; and Kyle D. Brown, Attorney at Law, Hill, Farrer & Burrill for Anaheim Union High School District.

Before, Gary M. Gallery, Administrative Law Judge.

PROCEDURAL HISTORY

This case examines petitions for "transfer of jurisdiction" by five separate exclusive representatives requesting certification of Teachers United Uniserv Unit/CTA/NEA (hereafter Teachers United) as the new exclusive representative in the five respective school districts.

Over the signatures of each of the five chapter presidents and William Harju, executive director of Teachers United, five separate requests for transfer of jurisdiction to Teachers United were filed in March of 1981 with the Los Angeles Regional Office. Pursuant to PERB regulations notice of the petitions were given to the respective employer Districts who in turn filed sundry objections to the petitions. Settlement conferences were held on June 3 and 12, 1981 without success. A formal hearing was conducted on October 5, 6, 7, and November 6, 1981. Filing of post-hearing briefs was completed February 4, 1982 and the matter stood submitted.

FINDINGS OF FACT

Each of the five school districts is an employer within the meaning of the Educational Employment Relations Act[1] (hereafter EERA). At all times relevant hereto, the five local

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[1]Government Code section 3540 et seq. All references are to the Government Code unless otherwise noted.

chapters Anaheim Elementary Education Association, CTA/NEA (hereafter AEEA); Centralia Education Association CTA/NEA (hereafter CEA); Magnolia Educator's Association, CTA/NEA (hereafter MEA); Savanna District Teachers Association, CTA/NEA (hereafter SDTA); and Anaheim Secondary Teachers Association, CTA/NEA (hereafter ASTA) have been and are employee organizations within the meaning of EERA. Since 1976, each has been recognized as the exclusive representative of certificated employees at each of the five districts.[2]

Each of the Chapters have collective bargaining agreements with the respective employers.[3] All contracts recognize the local chapter as the exclusive representative of unit members.

All of the Districts, save for Anaheim Union High School District, are elementary districts (kindergarten through sixth grade) and vary in size, number of schools and students. Anaheim City has 21 schools and 11,400 students; Centralia has ten schools (two closed) with an average daily attendance of 3809; Magnolia has nine schools (one closed) with an ADA of

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[2]All the associations were voluntarily recognized by the respective employer school districts at different times in 1976.

[3]The contract history is:

Anaheim Union High School District; 1978-1981, four 1-year contracts; 1981-1984 (three-year contract); Anaheim City Schools District, 1976-1981, five 1-year contracts; 1981-1984 (3 year contract) Centralia School District, 1976-1980, four 1-year contracts; 1980-1983 (three-year contract); Magnolia, 1976-1981, five 1-year contracts, 1981-1984 (three-year contract); Savanna, 1976-1981, 1-year (1976-77), 3 year 1977-1980, 1 year 1980-1981.

1733 students. The Anaheim Union High School District has eight high schools (9-12), eight junior high schools (7-9), a continuation high school and a special education high school. Its current enrollment is approximately 24,173 students.

The chapters are similar in organizational structure in that the basic governance body consists of a representative council (or Assembly) made up of members of the board of directors (or executive board) and representatives from each of the building sites within the district. The board of directors (or executive board) is made up of the officers (president, vice president, secretary and treasurer) plus directors at large and/or the CTA state representative. The officers and state representatives are elected at large within each chapter while the building or faculty representatives are chosen at the building level.

While the chapter bylaws vary in content and detail, they do, in addition to providing the foregoing, provide for negotiating committee or bargaining team member appointment with ratification by the executive board or the representative council. A grievance committee is also provided with similar appointment provisions.

Each of the chapters has, at all times material hereto, been affiliated with the California Teachers Association (hereafter CTA) and the National Education Association (hereafter NEA). The chapters, CTA and NEA each set their

respective dues. Pay warrant deductions are forwarded directly to CTA who in turn distributes to NEA and the chapters their entitlements.

Sometime prior to 1973, ASTA established a Uniserv unit within the chapter.[4] In 1973, William Harju became executive director of the ASTA UniServ unit. In 1974, a Uniserv unit, called TUCAMS,[5] representing the associations at the Centralia, Anaheim, Magnolia, and Savanna School Districts was formed. Charlene Evans served as executive director of TUCAMS. ASTA and TUCAMS began to share office space.

Services rendered by Harju and Evans were bargaining assistance, developing and implementing training programs, developing and assisting implementation of political action, public relations, grievance training and processing (both informal and formal), and lobbying activity.

From 1974 forward there was a progression of coordinated activity between the representatives of ASTA and TUCAMS, in part, simply because of the sharing of offices. There came to

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[4]Uniserv is a project implemented in 1970 by NEA to provide assistance to local chapters in matters of employer-employee relations. Chapters or groups of chapters having 1200 or more members may obtain financial assistance from both the NEA and the CTA to support the cost of staff. Under the project, the staff person could be assigned up to 20 days for NEA or CTA assignments.

[5]An acronym for Teachers United, Centralia, Anaheim, Magnolia and Savanna.

be joint training sessions of those persons who were going to serve on chapter negotiating teams, and of persons who were going to do grievances.

Prior to 1978, each chapter bargaining team met separately and worked independent of one another.[6] They developed their own surveys, held hearings, developed their own initial proposals and counterproposals. After the negotiating team had developed the proposal it would go to the representative council or the executive board for approval before being submitted to the employer school district.

As noted earlier, in 1976, ASTA became the exclusive representative of the Anaheim Union High School District. The local chapters, CEA, AEEA, MEA and SDTA likewise became the exclusive representative in their respective districts that same year. TUCAMS, however, continued to exist as a uniserv unit for the four chapters.

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[6]At each chapter level, annual negotiating sessions commenced with the selection of the members of the negotiating team. In September or October team members would be identified and orientation would take place. In November, December, and January the team would conduct surveys and hold hearings to obtain input on issues of concern. The results of the survey would be tabulated. In January and February, the drafting phase would take place. Harju drafted proposals for ASTA and Evans drafted the proposals for each elementary chapter. Because there was and is a time lag in the time of actual negotiations after the initial proposal is advanced, the chapters undertook a second survey which summarized the proposals and attempted to get priority preferences from the teachers to give direction to the bargaining team members as to the importance of the issues.

Early in 1978, the ASTA and TUCAMS boards established a joint committee to study staff recommendation for a merger of the two Uniserv units. Bylaws were formulated and were approved by the respective boards. In the spring the representative councils in each of the chapters voted on and approved the proposed merger.[7] Chapter members did not vote on the merger. As a result of the merger, both ASTA (Uniserv) and TUCAMS were replaced by Teachers United, and ceased to exist as Uniserv units.[8] Both CTA and NEA were notified and the annual contracts between those respective bodies were changed to reflect the new Uniserv unit.

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[7]Stated as purposes in the bylaws of the TU were:

a. Specific to provide staff and related office services for the benefit of the member associations in conjunction with California Teachers Asscication and the National Education Association.

b. General to promote the advancement of education; to further the educational interests of the member association; to secure and maintain for the teaching profession in public schools its true rank among the professional of the State of California; and to furnish a practical basis for the united action devoted to the cause of education within the public school districts employing teachers represented by the member association.

[8]ASTA continued as the exclusive representative at the Anaheim Union High School District.

As with its predecessors, membership in Teachers United (hereafter TU) was limited to associations, not individuals.

The TU board had one governance structure. Each participating chapter had representatives on the board, with ASTA having four votes, AEEA two votes and the remaining three chapters each having one vote.[9] The allocation was predicated on numbers of members.[10] Harju reported to this board. In the summer of 1978, Sharon Scott was hired to take the place of Evans who had retired. The two staff persons allocated themselves work among the several chapters.

In August of 1978, the TU board considered staff recommendations that included consolidated efforts on bargaining and grievance procedures.

At that time, TU formed a bargaining council composed of the 30 or 40 persons who were the bargaining team members of the member chapters. The council selected its own chairperson, developed approaches to collect information and data and undertook the traditional survey to develop proposals for submission to the Districts.[11] The bargaining council

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[9]Los Alamitos joined TU in 1979.

[10]Dues to TU were set by the TU Board subject to approval by the chapter representative councils.

[11]Two of the questions in the 1978 survey conducted by the TU Bargaining Council addressed teachers' position on a single bargaining agent and withholding settlement on striking in support of teachers of another district.

drafted a common proposal that was put on the table in all five districts. That year and in 1979 they held joint meetings followed by chapter caucuses to discuss issues that might be particular to their district. Harju drafted an initial proposal in January and then in late January or early February the bargaining council met as a deliberative body and approved it. Thereafter, the chapters' teams received and made separate adjustments to the proposals to fit their circumstances. The proposals were then submitted to each of the representative councils for approval and then on to the respective school district for bargaining. Bargaining took place with the chapter team members and, of course, Harju or Scott.

There was also formed in 1978 a TU grievance committee with representatives from each of the chapters. Although, said Harju, this committee was an "internal commmittee" its creation caused the chapter grievance committees, except for Magnolia,to cease to exist.[12] At no time prior to 1981 did a member of the TU grievance committee process a grievance outside of its own district. Harju did not tell the districts when he was processing a grievance that it was being processed by the TU grievance committee as opposed to the local grievance committee. He testified, however, that the staff stopped

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[12]No chapter, however, amended its bylaws to eliminate the designated grievance committees.

referring to the old Uniserv units (ASTA and TUCAMS) and referred to themselves as TU staff and used the new TU letterhead.[13]

From the beginning of meetings of the TU Board, written material supplied to them emphasized the single bargaining agent approach. In August of 1978, Harju recommended to the Board, and they adopted, a 1978-79 program that had among its goals for collective bargaining "to experiment with a variety of techniques designed to build a bargaining commitment to 'Teachers United' as a unit." For grievances, a goal was "to develop a 'cadre'" of 25 teachers who are capable of processing a grievance up to the arbitration level in any of the five districts. In August of 1979, in outlining the 1979-80 program, Harju reported to the TU Board that the Teachers United Bargaining Council and Grievance Committee would continue "with a strong emphasis that the members of Teachers United move to the single Agent bargaining approach."

In early September 1980, Harju presented to the TU Board the "Teachers United Uniserv Unit 1980-81 Teachers United Bargaining Project." It was then adopted by the Board and presented to the chapter representative councils in October

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[13]Sharon Scott left employment of TU in September of 1980 and Harju took over the processing of grievances in all six of the member chapters.

where it got approval by a voice vote. (Los Alamitos did not approve of the project.) The project was then presented to the building representatives at their October 1980 leadership conference. In written form, the project described that the TU bylaws would be rewritten so that TU would take charge of the bargaining process for all six chapters. TU's stated purposes would be amended to include reference to acquiring and maintaining the collective bargaining and contract administration rights in each district; provide for individual membership in TU; provide for future bylaws amendment by the TU representative council rather than the representative council of member associations; the establishment of a representative council (one representative from each building plus one for each 25 or more members), and executive board (four officers elected at large plus presidents of each of the member associations). There would be a collective bargaining committee (three persons from each chapter), and bargaining team (two permanent teachers, the executive director (nonvoting) and three teachers from and selected by each chapter to serve only on the team for negotiations with the respective employer. The bylaws would provide for the establishment of or adoption of goals and minimum settlement standards for all contracts by the representative council; impowering the bargaining committee to monitor and approve all tentative agreements and provide that no tentative agreement

might be reached that failed to meet the goals or minimum standards unless approved by the bargaining committee. Approval of tentative agreements by the bargaining committee would be required before submission to the chapter membership for ratification. Contract administration would be the responsibility of a TU grievance committee. Provisions for withholding of services either by a chapter or by the member associations throughout TU would be included.[14]

The project document further described what legal process would be entailed (request for voluntary recognition, unit modification petition) and additional material on a membership education campaign.

Teachers were first exposed to the project following the October leadership conference in 1980. Materials were given to the building representatives at the conference with instructions to have meetings with and distribute the material to teachers and to get their input on the bargaining project. The materials included a cover letter dated November 1, 1980, to all teachers and a pamphlet which described the Teachers United Bargaining Project. The cover letter extolled the benefit of the Teachers United coordinated bargaining effort in obtaining higher salary settlement for 1980-81 in Orange

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[14]These provisions on withholding of services were as are set forth in the bylaws as adopted see page 30, infra.

County, explained a timeline for teachers' consideration of the proposed bargaining project including drafting of bylaws, meetings with teachers, and election for amendment of bylaws to achieve the project.[15]

The pamphlet contained the following: it began with an introduction stating:

> INTRODUCTION
>
> The Teachers United Bargaining Project, which will be voted upon by all of the members in all of the six chapters in February, 1981, contains three major elements as set forth below. During the next several weeks, you are urged to discuss the project, criticize the project, and suggest changes to the project. A final draft will be presented to you in January, 1981 for consideration prior to the actual election in February.

The pamphlet described the governance structure of the proposed organization (as described before). It further described the Bargaining Committee and its duties, and the bargaining team. The pamphlet went on to describe "goals and settlement standards" adopted by the TU representative council based upon the surveys taken and provided that when any of the six chapters were close to settlement, the bargaining committee would convene to review the tentative agreement to insure it

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[15]Noted was the timing for meetings to be held January 5 - February 15 in all 69 buildings within Teachers United - questions answered, materials reviewed, and Bylaws elections to be held on the adopting of the Teachers United Bargaining Project between February 15 - February 28.

met the settlement standards. Approval of the committee would be required before the tentative agreement could be submitted to the membership for ratification.

The pamphlet described a concept "Chapter Option" and stated:

> Under the project, a chapter would be permitted, on an annual basis, to "opt" in and out of the bargaining aspects of the new Teachers United structure. A chapter opting out of the Bargaining aspects would receive other services and would participate in other programs, in accordance with policies adopted by the Teachers United Representative Council.

Finally, the pamphlet set forth the following:

> LEGAL BARGAINING AGENT STATUS
>
> . When the Bylaws are approved in February, the next step will be to file appropriate documents, first with the School Districts requesting a voluntary recognition of Teachers United as the bargaining agent. If voluntary recognition is not forthcoming, appropriate documents would be filed with the Public Employment Relations Board--PERB.
>
> . PERB, upon receipt of the petition, conducts an investigation and, within 1-2 months, issues a ruling which could then be appealed by the District or by the Association.
>
> . Bargaining, however, could continue under the revised Teachers United Structure, even while the litigation is being pursued through the PERB process.

Harju said the building representatives were encouraged to hold at least two meetings with teachers to distribute the

material and discuss the project. He testified that some of the building representatives had told him they did hold two meetings.

An almost weekly publication of TU is the Teachers United Today. Mailed in packets to the building representatives at each building site, the newsletter is thereafter placed in teachers' mailboxes. Prior to 1980, TU would print and distribute to each chapter their own local publications. In the summer of 1980, the publications were consolidated into the TU Today with every fourth edition containing local chapter news as requested.

Notice of local elections were generally published in the local newsletter in the form of election schedules, usually in conjunction with election of officers and seeking nominations therefore. It was not customary to post a formal notice of election by the chapters.

In an undated, but apparently timely to the month of November, 1980, the Teachers United Today referred to the TU's activities with regard to the bargaining project. While not referring to the concept of bargaining agent change, the article did describe the governance structure and bargaining team make up contemplated by the project. It referred to the pamphlet being distributed describing the project and solicited teacher input on the project. A December 18, 1980 publication

of Teachers United Today listed areas of concern that had been obtained from teachers input.[16]

Also listed was a timeline on the final consideration of the bargaining project.

> January 1-15: TU Board discusses and adopts a final version of the bargaining project.
>
> January 15 - February 15: Materials distributed to all Teachers United members. Building meetings held to discuss project, and to answer teachers questions.

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[16]Those concerns were:

> Local bargaining team should be able to control flow of proposals/counterproposals.
>
> Local bargaining team should be subject to recommendation/advice from TU bargaining committee, but not control.
>
> Keep the representative council manageable in size.
>
> Only districts who vote "yes" on unit-wide strike should participate.
>
> As much protection of "local autonomy" as possible should be written into bylaws.
>
> Make certain that each local's unique needs" can be met at the table.
>
> Ratification of this project should be by secret ballot, with only members voting.
>
> People who run for TU office need to get out to meet the members. They need to be known.
>
> Chapters should be able to opt out of the bargaining project, and new chapters should be able to be added.

February 15-27: Election activities, election, results announced.

A January 6, 1981 edition of Teachers United Today solicited teachers to assist in writing pro and con arguments of the project. A January 27, 1981 edition noted that the TU board had adopted a revised set of TU bylaws which were to be submitted to every member of Teachers United on February 25 and 26, 1981.[17] The bylaws, if adopted, stated the item, would result in the implementation of the Teachers United bargaining project. Also noted was notice of the building site visits by the TU Board and bargaining council to the 69 buildings for the purpose of providing all members with answers to their questions regarding the project and for distribution of materials related thereto. Teachers were urged to attend to become fully informed of the project prior to the election.

In mid-December, 1980, the members of the TU Board and the bargaining council had "rap sessions" with building representatives. These sessions were to exchange information regarding the proposed bargaining project. The discussions led to the promulgation in late January or early February 1981, of a second pamphlet called "We've Listened to You".

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[17]Harju admitted on cross examination that it should have stated that a vote on the bylaws amendment would be submitted to the members of TU.

This pamphlet contained a summary of the revisions sought by the bylaws amendment including the Executive Board of TU, the representative council make up, the Bargaining Committee, and Bargaining Team, establishment of goals and objectives, assurance that local autonomy would be protected, and finally, express reference to the "modification of Bargaining Agent Status" from the chapter to Teachers United through a petition for transfer of jurisdiction through PERB. The pamphlet went on to further note that because of concerns of teachers expressed during the "rap" sessions, the proposed bylaws were being amended to insure that the local bargaining team would have final authority on tentative agreements rather than the Teachers United bargaining committee; that local or chapter representative bodies would continue to exist; that only chapters who vote to participate in a "unit wide" strike should be asked to join such strike; that any chapter would be able to replace members of their bargaining team who become a member of the unit wide team; the vote on ratification of the bylaws should be by secret ballot and only members would be permitted to vote, and that chapters should be able to pull out of the project and others would be able to join the project. Other changes were noted and either incorporated or rejected with an explanation. The pamphlet also noted questions that fell into general categories; it stated:

I. How is our "local autonomy" protected?

1) Your chapter controls the flow of bargaining.

2) Your chapter has the ability to add to or to subtract from the Teachers United initial proposal;

3) Your chapter has the ability to "opt out" of the Bargaining Aspects of the program annually;

4) Ultimately, your chapter can withdraw from Teachers United.

. . . . . .

The proposed bylaw amendments themselves were not given to the individual teachers but rather distributed to the building representatives at each of the building sites who were instructed to post them.[18] They were not given to the individual teachers, said Harju, because of the cost of reproduction and the likelihood that the teachers would not actually read them.

Members of the TU board, the bargaining committee and Harju in teams of 2 or 3, visited each of the 69 buildings in the last half of January and the first half of February to meet with teachers to explain the project and answer questions regarding the project. The "We've Listened to You" pamphlet was distributed to the teachers present, and extras were given

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[18]Two copies were given to each elementary school, three to the junior high and five to the high school building representatives.

to the building representatives who were to distribute them subsequently.

Additional material sent to the teachers included a leaflet setting forth arguments in favor of the bylaws amendment and a separate leaflet setting forth arguments against the project. These materials were distributed in packets to the building representatives who, in turn, placed them in teacher mailboxes.[19]

Finally, a one-page leaflet listing both the pro and con arguments with rebuttal was sent to the building representatives for distribution about a week before the election.

TU did not make a point of distribution of any materials to teachers who were not association members. Rather, TU deferred to whatever practice prevailed within the individual chapter. Some chapters, such as Magnolia, said Harju, were quite adamant that only members of the association receive association materials.

While the TU Board was in favor of the project, it did not endorse, as a board, the pro arguments. One member of the board was against the project and, in fact, a member of the committee established to write the con arguments.

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[19]The "con" arguments addressed concern for loss of local control, making the executive director a czar, causing the employers to unify, financing, bigger versus smaller and the legal difficulties in the project. The "pro" document addressed, in refutation form, the same issues.

On or about February 23, 1981, all building representatives were provided with a packet relating to the forthcoming election. They were instructed to hold the election on either the 25th or 26th of February. They were provided with a ballot for each member, a list of the members in the respective building, a tally sheet for recording and certifying the results of the election. Included were suggested methods including advice not to place ballots in teachers' mailboxes but rather personally hand the ballot to the teachers and to simultaneously mark the ballot; to provide a ballot box or ballot envelope and make provision for teachers to mark the tally list when the voter had deposited their ballot; to count the ballots upon the closing of the election day and to notify TU and to post one tally sheet for the faculty, and to mail the ballots and the tally sheet to TU.[20]

The ballot consisted of the single question "Shall the Revised Bylaws of Teachers United be Adopted as Presented?" with a box marked "Yes" and a separate box marked "No" for checking by the voter.

The District presented four witnesses who served as election persons at four different school sites for the February 25-26 election. Three others testified for the

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[20]To pass, according to the notice, the amendment required 1) a majority of all members voting to approve; and 2) a majority of all members voting in at least 4 of the 6 Teachers United Chapters.

petitioners. Each testified as to the procedure used by them in conducting the election. Each had obtained the election instructions and ballots in sufficient quantity to present to members of the association at their respective building, a membership list, and an envelope for holding the ballots cast.

From the testimony of the various building representatives who conducted the election, it appears that some building representatives did not provide advance notice of the election at their building.[21] They either placed the ballots in the mail box of individual teachers, in the mailroom,[22] or they handed the ballots directly to the teachers with a request that they be returned to the building representative. In all instances, balloting took place without benefit of a voting booth and most voting took place in the presence of others, including the building representative. In some cases teachers sat at the same table and marked their ballots. There were instances where, during voting, teachers would ask questions of

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[21]Two testified that they either posted or placed notice in a newsletter the day before the election.

[22]The two building representatives who placed the ballots in the mailboxes employed a check off to insure the authorized voter got the ballot. One building representative testified that he marked the ballot with a number corresponding to a number opposite the member's name on the voter list. He testified that when he was checking the number off after the ballot had been cast, he did not look to see how the person had voted. The other checked on the voter name as he saw the teacher remove the ballot from the mailbox.

the building representative about the issues. Building representatives Kinney and Sorenson testified that there were a couple of questions asked about how they felt and they replied that they would have to decide for themselves. McGowan testified that three or four voters asked what they were voting on and he replied that it was the election for the change in bylaws. Schiels testified that two or three asked what the issue was. He told them that the Executive Board had recommended a yes vote, but it was their decision to make at the time. In all cases, the building representative collected and counted the ballots, posted the tally in their respective school sites, called TU with the results, and mailed the ballots with their personal tally to the TU office.

Two of the building representatives conducted the election on both the 25th and the 26th. Those who conducted the election on the 25th phoned the results to TU and posted their tallies at the end of that school day.

Those building representatives who had conducted prior elections said that the February election was conducted in the same manner.

On March 11, 1981, the TU Elections Committee reported to the TU Board the results of the election. This report was drafted by Harju for the committee from data they had given him after meeting two or three times in Harju's office following the election. Harju said that unless the tally showed a close

count, the elections committee, as far as he knew, did not recount the ballots, but relied upon the tally sheet submitted by the building representative. The committee report indicated the elections result as follows:

Chapter	Yes	No
AEEA	219	132
ASTA	394	133
CEA	142	30
LAEA	55	106
MEA	78	75
SDTA	58	8
TOTAL:	946	484

The committee noted that ballots had been returned from all units except the Centralia District office. Harju testified that that District office had perhaps four voters located there.

At the time of the election in February of 1981, the Anaheim Union High School District unit represented by ASTA had 1017 employees of which 715 were members of ASTA. The Anaheim City School District had 474 employees in the unit of which 406 were members of AEEA. Centrailia had 237 employees in the unit with 182 members of CEA. Magnolia had 223 in the unit with 164 members of MEA. Savanna had 80 employees in the unit of which 68 were members of SDTA.[23]

A contemporary edition of the TU Today recorded the election results with a difference of some 20 votes from that reported by the committee. Harju said the TU Today version was

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[23]By stipulation of the parties.

based upon the telephone report by the individual building representatives and that probably there was a building missing in that report.

The TU Board adopted the report of the elections committee.

The 1981 bylaws amendment procedure did not follow the procedures outlined in the existing TU bylaws,[24] said Harju,

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[24]The Bylaws of TU as of 1978 provided for amendment as follows:

> 3-3. Amendments Amendments to these Bylaws shall be adopted by means of the following processes:
>
> a. PROPOSAL By majority vote, the Executive Board may propose an amendment at any meeting. Amendments may also be proposed by the policymaking body of any member association.
>
> b. NOTICE The proposed amendments shall be transmitted to all member associations not less than 30 days prior to the meeting of the Executive Board at which enrollment is to be considered.
>
> c. RATIFICATION The proposed amendment must be approved for ratification by vote of approval of the policymaking body of all member associations, to be effective either immediately or at such later time as is specified in Provisos attached to the amendment.
>
> d. ENROLLMENT Following the ratification process, official enrollment of an amendment shall require an action of the Executive Board.

because those "bylaws had to do with a completely different type of governance in the sense that under the previous bylaws Teachers United was a coalition of 5 chapters and was really--in that sense was not a membership organization and so the members didn't have the right to vote with Teachers United or other previous bylaws."

The revised bylaws contain a revised statement of purpose of the organization to "acquire and maintain the collective bargaining and contract administration rights and to otherwise represent its members in their employment relations with employer school districts," (Section 1.2). As noted, membership in the association was expanded to include individual members of the associations as well as retaining association membership[25] (Section 2.1).

The revised bylaws contain (as did the original TU bylaws) a provision for withdrawal from TU (Section 2.3). It requires thirty days notice to the TU executive board before submitting the question of withdrawal to its members and there must be 120 days lapsing between the action of the members of the association and the end of the current fiscal year.

The new bylaws vest policy making responsibility in a TU representative council composed of one representative from each building within the six districts plus one for each additional

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[25]The revised bylaws require two thirds majority of the representative council for amendment.

25 members, and the members of the executive board. The executive board is composed of four officers (president, vice president, secretary, and treasurer) elected at large among the members associations and the president (or designee) of each of the member associations. The executive board is charged with the policy administration function (Section 4).

A provision of the bylaws expresses the intent not to supplant or replace similar member association governance bodies (Section 4.2).

Under a provision on "Collective Bargaining Procedures," member associations are given an opportunity to "opt out" of participating in the collective bargaining procedures. However, the provision requires notice of and action to opt out prior to December 1 of any given year and then such exercise is only effective for the next second succeeding year (Section 8). Absent such option, the association is bound to participate in the collective bargaining procedures described below.

The bylaws provide that TU shall be the exclusive representative (except for those who opt out). By the affirmative vote of the members of the association in passing on the question of amending the bylaws, the member associations agree to petition PERB for a transfer of jurisdiction of the

exclusive representative status from the member association to TU[26] (Section 8.2).

The collective bargaining procedures call for each member association to appoint three members to a TU Collective Bargaining Committee for a one-year term. That committee is to conduct surveys and hearings for negotiations, draft the TU annual initial proposal (which may include proposals requested by member associations) for submission to and approval of the TU representative council; develop recommendations for the representative council and annual TU bargaining goals, minimum settlement standards, and procedures for monitoring of bargaining; and to annually select, subject to Representative Council ratification, two of its members to serve on the TU bargaining team.[27]

The TU wide bargaining team is a three-member team composed of the two permanent voting members (teachers), Harju (nonvoting) and three members of the local association who are designated under association procedures as members of the negotiation team for the district (Section 8.4). The

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[26]Or in the case of a new member, by virtue of a vote of the members to affiliate with TU.

[27]Under the bylaws, the committee is to select those persons who "best fit the following criteria", bargaining experience and training, commitment to the goals and objectives of TU, ability to articulate and calmness under stress.

collective bargaining team is charged, subject to the directions established by the Representative Council, the member association and the TU Bargaining Committee, to negotiate an agreement in each member association of TU (Section 8.4).

An additional section provides that, subject to the Bylaws and such policies as the Representative Council might establish, the Collective Bargaining Committee is to "monitor the progress of bargaining in each member association, and "to recommend approval or disapproval of a tentative agreement prior to the submission of the tentative agreement to the member association for its ratification," (Section 8.3).

The bylaws establish a TU Contract Administration/Grievance Committee selected annually by the Executive Board. This committee is charged to work with the members'associations to continually educate members of contract rights, provide training for grievance representatives, and assist in the processing of grievances (Section 9).

A provision on "Withholding of Services" provides that individual member associations may withhold services if the collective bargaining team recommends it to the member association executive board and the Collective Bargaining Committee of TU concur, and the members of the association concur by a secret vote with 2/3 in favor of withholding services (Section 10.1).

The provisions also provide for multi-member association withholding of services, called for by the TU Executive Board subject to the TU collective bargaining committee recommending such action to the Executive Board, and that recommendation is concurred in by the Executive Board and the Representative Council. It further requires a determination by the members of an affected member association, by a 60 percent vote including 60 percent of those voting in a majority of the affected associations by secret ballot (Section 10.2).

The revised bylaws provided that the revised bylaws would be considered ratified by the majority vote of members of TU voting, plus a majority of at least four of the six members of the TU (Section 11).

Finally, the bylaws provide that member associations would by June 30, 1982 bring their bylaws into compliance with the revised TU bylaws (Section 11.2).

Dues for the revised Teachers United are set by the TU representative counsil and are not subject to approval of the chapter representative councils.

The petitions for transfer of jurisdiction filed in March of 1981 by the five associations are similar in substance but vary in accordance with the separate identity of the employee organizations. Using AEEA as an example, the petition begin with the following:

> This letter constitutes a petition for a transfer of jurisdiction from the Anaheim Elementary Education Association to the Teachers United UniServ Unit/CTA/NEA, filed pursuant to PERB regulations, Section 32761, on behalf of the members of the Certificated Bargaining Unit of the Anaheim City School District.

The petitions, in addition to containing other requirements of section 32761(b), state the nature of the transfer of jurisdiction as:

> . . . The nature of this transfer of jurisdiction is to consolidate the resources and services of the six local associations of Teachers United, to avoid duplication of services and to engage in cooperative training, planning and service while still assuring that unit members in each of the six certificated employee bargaining units involved will maintain essential control over the negotiations of their own collective bargaining agreements.
>
> Teachers United UniServ Unit/CTA/NEA will represent the Bargaining Unit formerly represented by the Anaheim Elementary Education Association, and continuity of representation is assured as follows:
>
> a) Our Executive Director, William A. Harju, will continue to provide direct service and consultation at the bargaining table, as has been the case for the past several years.
>
> b) Members of the Certificated Bargaining Unit in the Anaheim City School District will continue to serve on the bargaining team.
>
> c) Members of the Certificated Bargaining Unit in the Anaheim City School District will continue to ratify their own collective bargaining agreements.

ISSUES

The issue in the case is whether the petitions for transfer of jurisdiction (amendment of certification) requested by the five exclusive representatives should be granted.

CONCUSIONS OF LAW

Under Government Code section 3541.3, the Public Employment Relations Board (hereafter PERB) is empowered to "consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations" (3541.3(b)). Section 3543.3 (1) empowers the board to "decide contested matters involving recognition, certification, or decertification of employee organizations."

PERB is empowered to adopt rules and regulations to "carry out the provisions and effectuate the purposes and policies" of the EERA (section 3543(n)).

The PERB has adopted regulations (Article 3 commencing with section 32760 of title 8 of the California Administrative Code) which authorizes a recognized employee organization to file with a PERB regional office "a request to reflect a change in the identity of the exclusive representative in the event of a merger, amalgamation, affiliation or transfer of jurisdiction affecting said organization (section 32761(a)). After specifying information required of the requesting party (section 32761(b)), the employer school district is provided an

opportunity to respond (section 32762). Thereafter, the regional director is to conduct such inquiries and investigations or hold such hearings as deemed necessary in order to decide the questions raised by the request (section 32763(a)). The regional director may dismiss the request for lack of standing by the petitioner, if the petition is improperly filed, or based upon the investigation conducted by him or her (section 32763(b)). Approval of the request shall result in the issuance of a new certification reflecting the new exclusive representative.[29] Decisions of the regional director may be appealed to the Board (section 32763(d)).

While the petitions filed by the respective associations specify a request to "transfer jurisdiction," it is clear that the regional director's authority is to address the question of whether a new certification should issue because of the transfer of jurisdiction. Both the underlying statute and the regulations regarding such transfer assume the action of the exclusive representative to have taken place. PERB's review is limited to the question of whether a new certification should issue.

This is a case of first impression regarding the request for new certification because of a "transfer of jurisdiction"

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[29]Such recertification does not affect timelines for purposes of window periods (section 32763(a)).

between two or more employee organizations. Neither the statute nor the regulations set forth criteria for ascertaining the appropriateness of granting or denying the request for change of certification.

In their initial post hearing brief, petitioners describe their request as a petition for "transfer of representation jurisdiction" to a "joint entity." No attempt is made to define or describe the essence of the transition that has occurred. They focus upon and urge as do the Districts, the use of those criteria employed by the National Labor Relations Board (hereafter NLRB), discussed below, in reviewing mergers or affiliations.

"Transfer of jurisdiction" does not describe the character of change, if any, brought about by the bylaws amendment. Merger, amalgamation or affiliation[30] each carry significance

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[30]A merger is the absorption of one corporation by another which survives, retains its name and corporate identity together with the added capital, franchise and powers of the merged corporation and continues their combined business. Heating Equipment Mfg. Co. v. Franchise Tax Board (1964) 228 Ca.2d 290, 39 Cal Rptr. 453.

An affiliation is the alignment or association of a union with a national or parent organization. An affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization. The organizations participating in the affiliation determine whether any administrative or organizational changes are necessary in the affiliating organization. Amoco Production Company 239 NLRB No. 182, 100 LRRM 1127 (1979).

Amalgamation means to unite or combine into a uniform or independent whole. Websters Third New International Dictionary.

of legal status of the entities involved whereas a transfer of jurisdiction would seem more aptly descriptive of the effect of such change, i.e., jurisdiction of the exclusive representative is changed because of some other affectation of the status of the incumbent exclusive representative.[31]

It is clear that what has occurred is not a merger. A merger would cause one of the merging entities to cease to exist. As is evident, each of the chapters continues to exist. The associations, as separate organizations, their officers, governing bodies, and functions, except as modified by the new bylaws, continue in force and effect. What has occurred, underlying the petition, is the transformation of an intermediate service unit of existing (and recognized) affiliates, CTA/NEA, into an enhanced substantive entity, with an elected governance body possessing some, but not all powers of the original exclusive representative.

While the new entity, created by the bylaws amendment of 1982, is invested with some powers formerly held by the individual chapters, the latter still retain all indicia of their pre-1981 status. What has been conveyed to the TU is the appointing power of a portion of the bargaining team members, the power to approve strikes, and absolute discretion to set

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[31]See Board regulation section 33261 (b) (c) authorizing employer and employee organizations to petition for transfer of classifications from one unit to another.

its own dues. Other functions, like establishing goals and settlement standards, are delegated to the new entity, however their rendition of these functions are not obligatory upon the individual chapters.

It would appear that this is more of a hybrid affiliation, not unlike that existing between each of the Chapters and CTA and NEA. The creation of the more substantive TU and the act of affiliation having taking place simultaneously at the February election.

No precise definition of "transfer of jurisdiction" appears available and the parties urge no reasons why the transition effected here should be tested in any fashion other than those employed by the National Labor Relations Board, (hereafter NLRB) in reviewing request for amendment of certification where a merger or affiliation occurred.

Prefatory to such discussion, however, certain features of the circumstances surrounding the petitions for transfer of jurisdiction deserve comment before addressing the substantive arguments raised by the parties in their post-hearing briefs.

Initially, it is noteworthy that there is no evidence that the local chapters have, in fact, amended their bylaws to accommodate the succession to representative status sought by Teachers United. This point was not argued by the Districts. While there was argument advanced that the amendment to the TU bylaws did not conform to the provisions of chapter bylaw rules

on amendment of those bylaws,[32] such argument however fails to consider that the chapters' bylaws themselves have not yet been amended. In the context of designated specific provisions of those local bylaws that govern the respective chapters relating to negotiating teams, grievances, dues setting, and the like, there should be amendment of those bylaws to effect the change claimed to have occurred by TU as a result of the February 1981 amendment of the TU bylaws.

For example, ASTA bylaws contain provision for a Negotiating Committee with members appointed by the President of the Chapter and confirmed by the Executive Board. The policies for the committee are set by the Representative Assembly. Members of the Chapter bargaining team are selected from the Negotiating Committee. This rule conflicts with that function of the TU bylaw as amended in 1981 which sets forth the revised chapter bargaining team, its appointment and constitution, as well as the source of proposals and policy direction.[33]

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[32]See the discussion on page 26 infra, relating to the TU bylaws amendment.

[33]The bylaws of AEEA has as an express stated purpose, to "represent its employees." Among the duties of the president are to serve on a Uniserv board. Members of the Negotiating Team are appointed subject to confirmation by the Representative Council. The negotiating team and a grievance committee are subject to operative Standing Rules.

The Centralia Chapter is expressly affiliated with CTA/NEA. Its Board of Directors includes the negotiating team

The ASTA bylaws further contain express reference to ASTA affiliation with no reference to an affiliation with TU. The ASTA chapter has further detailed "Standing Rules" relating to the negotiating committee and its team as well as for a grievance committee.

Thus, integral provisions of the locals, i.e., representative status, provision for affiliations to Uniserv units, and/or CTA/NEA (with none to TU), appointment of and constitution of negotiating teams and/or grievance committees, remain unchanged. Their continued effect contradict the supposedly operative provisions of TU.

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spokesperson. Among duties of the president are serving on the Uniserv Board. The Board of Directors, among other duties, is to adopt standing rules for the selection of the Negotiating Team.

The Magnolia bylaws expressly refer to CTA and NEA as affiliates, and has a purpose to represent employees. Its Board of Directors includes the TUCAMS representative and includes among its president's duties as a TUCAMS representative as well as extra duties for the TUCAMS representative. It contains provision for the Board of Directors appointing the Negotiating Team (five members) subject to approval of the representative council. An article on grievance committee provides for selection by the general membership and nominees must be from permanent teachers.

The Savanna local constitution provides as a purpose to "represent the employees." The bylaws expressly refer to TUCAMS and representation (president and another) on the TUCAMS board. Included in the bylaws are provisions for a grievance committee with stated duties and for a negotiating team (five members) appointed by the Executive Board subject to approval of the Representative Council. The provision further refers to use of consultants from the Association, state and national staff.

The bylaws amendments of February 1981, provided for a transition whereby the locals would amend their bylaws to accommodate compliance with the provisions of the TU amended bylaws. That accommodation has yet to take place. Consideration of the request for transfer of jurisdiction (amendment of the certification) should be deferred until at least the bylaws of the local chapter have been amended to conform to the TU bylaws. This averts the possibility of granting the amended certification and then finding one or more of the locals have failed to accomplish amendment of their own operative bylaws.

A second concern is the somewhat nebulous status assumed by the chapters upon the perfection of their own bylaw amendments. This concern does not focus upon that provision of the new TU bylaws that addresses ultimate chapter withdrawal from an organizational relationship with TU (see page 27 herein for reference thereto) but rather upon the reservation by chapters, expressed in those bylaws, to exercise opting out of the bargaining process but not from TU, by notice given before December 1 of any given year for the next succeeding year. Under the operative provisions of the new TU bylaws, should a chapter determine to opt out of the "bargaining project", certification of exclusive representation would not automatically revert to the chapter. Rather, an amendment of the certification would have to occur. Under existing PERB

regulations, however, only the exclusive representative may seek an amendment to the certification. Should the petition for amendment of certification be granted, TU would be the only organization in standing to request an amendment to grant the chapter its standing as the exclusive representative. This requirement would leave the completion of the exercise of the option out of the bargaining process to the discretion of TU, not the chapter.

According to Harju, while TU would be the exclusive representative, the chapter would have its own bargaining team, advance its own proposals and seek its own contract with the employer district. The uncertainty of this process is further compounded by Harju's testimony that the option out only goes to the bargaining process - that is the bargaining team makeup - source of proposals for negotiations, participation in the formulation of goals and settlement standards. Thus, on its face, the option out provision envisions a change in the bargaining process, but not of the bargaining agent. However, that process envisions resumption by the chapter as the entity with with full bargaining stature with the respective employer. Unanswered in such a process is who is the employee organization with whom the employer will collectively bargain? With whom will the employer determine its at impasse? Who will consumate an agreement on behalf of the employees of the district? Who is the employer to look at for determination of

majority support? Who is the employer to focus upon if there is a withholding of services? In dealing with the chapter, the employer is exposed to the possibility of committing an unfair practice by failing to respect the rights of the exclusive representative (TU). The District cannot defer to the chapter on those matters statutorily owed to TU. The principle of exclusivity granted to an employee organization by recognition or certification brings as much certainty to the employer as to who to deal with in matters of employer-employee relations as it does in pronouncing the superior position of the designated employee organization over non-designated organizations. This "option out" process renders that exclusivity useless when, if exercised, the entity with whom the employer is to exclusively deal is changed during the certification period. The retention of this option to chapters, with the request for amendment of certification to TU only, is incompatible with the principle of exclusive representation granted by the EERA.

These requests have been analyzed in the context of whether they constitute a request for joint representation.[34] The concept of joint employee organization certification (usually flowing from joint petitions filed for certification prior to

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[34]PERB Regulation section 32700(d) recognizes "a joint petition may meet the required percentage by combining the total of the proofs of support for each of the employee organizations which make up the joint petitioner.

conduct of election and where two employee organizations appear as one joint entity on the ballot) requires that the joint entity be the bargaining agent and that neither entity comprising the joint venture may thereafter insist on bargaining with the employer alone. Mid-South Packers, Inc. (1958) 120 NLRB 495 [41 LRRM 1526], Suburban Newspaper Publication, Inc. (1977) 230 NLRB No. 187 [95 LRRM 1482]. An employer does not commit an unfair practice in refusing to bargain with either. A joint petition for certification will be dismissed where it is found that the petitioners do not intend to bargain jointly. Suburban Newspaper, supra. In the present case, it is clear that the Chapters do not intend joint representation. In their request for "transfer of jurisdiction" each chapter specifically requests a name change to "Teachers United UniServ/CTA/NEA." In each petition, the chapter asserts that its members "have voted, by majority vote, to transfer jurisdiction for representation . . . to Teachers United UniServ Unit/CTA/NEA".

What has been effectuated here is an affiliation between each of the Chapters and TU. The bylaws amendment of February 1981 not only resulted in the formation of a substantive employee organization, TU, as opposed to the former status as a service unit of CTA/NEA, but also produced an allignment of organizational affiliation between each of the chapters and TU.

That alignment contemplates a potential shift in the makeup of the bargaining team and a restructuring of the conditions by which withholding of services can take place. These matters are internal to the employee organizations and are compatible with an affiliation rather than an absolute change in exclusive representative designation. See Amoco Production Company (1979) 239 NLRB No. 182, 100 LRRM 1127.

The chapters should amend their request for amended certification to reflect the true nature of their relationship with TU. Upon amending their request to reflect an affiliation with TU, and meeting other conditions set forth in this proposed decision, amendment of certification should be granted.[35]

In summary, the incomplete transition reflected by the yet to be amended bylaws of the chapters and the uncertain status given to the chapters by their exercise of the opt out provisions suggest denial of the petitions. Dismissal, with leave to amend should issue, such amendment demonstrating chapter bylaws amendment to conform to TU bylaws as contemplated by the provisions of the TU bylaws and further amendment requesting certification reflecting affiliation with the TU UniServ Unit.

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[35]Such designation would read, for example with regard to ASTA, "ASTA/Teachers United UniServe Unit/CTA/NEA."

Beyond these considerations, the parties argue approval or disapproval of the petitions on grounds employed by the NLRB in similar cases.

The NLRB and the federal courts in reviewing decisions of the former, have addressed the question of mergers, affiliations and/or consolidations in the context of a request by employee organizations for change of certification[36] and in the context of unfair labor charges brought under section 8(a)(5) of the NLRA against employers for refusal to bargain.[37] The test is the same; is the successor employee organization a continuation of the incumbent organization or is it a substantially different employee organization. Independent Drug Store Owners (1974) 211 NLRB 701 [86 LRRM 1441] enforced (9th Cir. 1975) 528 F.2d 1225.

In either case, the Board's primary concern is weighing the interest of employees to freely select their representative under section 7 of the National Labor Relations Act[38] against

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[36]Regulations of the NLRB provide for employee organization request to amend certification. See NLRB Rules and Regulations subpart C (commencing with section 102.60).

[37]The contention of the employer in such cases is that there is no duty to bargain because the employee organization demanding to bargain is not the exclusive representative.

[38]Section 7 of the NLRA (29 U.S.C. section 150 et seq. provides:

> Employees shall have the right to self-organization, to form, join or assist

the broad policy of fostering stability of bargaining relationships brought about by the consummation and enforcement of collective agreements reached through the processes of collective bargaining. See Proctor and Gamble Manufacturing Co. v. NLRB (1981, 4th Cir.) No. 801275 reviewing 248 NLRB 119.

The same principle of employees' choice of their representative is expressly set forth in the EERA. Section 3540 states the legislative recognition of,

> . . . 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 . . .

Section 3543 provides in part:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

> labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

In reviewing a request for amended certification, the NLRB[39] looks to the question of whether the certified union does not oppose the amendment; (2) the bargaining unit remains the same; and (3) the members of the union are given an opportunity to consider and vote on the question of affiliation through a democratic process and in accordance with the union's constitution and bylaws. American Bridge Co. U.S. Steel Corp. v. NLRB (1972 3rd. Cir.) 457 F.2d 660, 79 LRRM 2877.

While both the test for change and the test for due process have been accepted and used by the courts in reviewing NLRB orders the courts have oftentimes differed with the Board on either the conclusion of whether there was a substantial change or whether there was procedural due process in the election procedures. See generally, Morris, the Developing Labor Law, Cummulative Supplement 1971-75 pp. 200-201, 1976 Supp pp. 98-101, 1977 Supp. pp. 114-116, 1978 Supp. pp. 101-102.

The continuity of representation test is essentially a factual determination of whether the new union is a continuation of the old union under a new name or affiliation

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[39]The Public Employment Relations Board will, where appropriate, take guidance from federal labor law precedent when applicable to public sector labor relations issues. Sweetwater Union High School District (11/23/76) EERB Decision No. 4., Fire Fighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608 116 Cal.Reptr. 507; Los Angeles County Civil Service Commission v. Superior Court (1978) 23 Cal.3d 65 151 Cal.Rptr. 547.

or if it is a substantially different organization. NLRB v. Harris-Woodson Co. (4th Cir. 1950) 179 F.2d 710 [25 LRRM 2346]; Amoco Production Co. v. NLRB (5th Cir. 1980) [103 LRRM 2813]. If there is no continuity of representation, management need not bargain with the new union until it has established its rights by an election.[40] Retail Store Employees Union, Local 428 v. NLRB (9th Cir. 1975) 528 F.2d 1225. If there is continuity of representation, there is no requirement for a Board election. NLRB v. Commercial Letter, Inc. (3rd Cir. 1972) 457 F.2d 660, 663 [79 LRRM 2877].

The Board and the courts will look to various factors to determine "whether changes have occurred in the rights and obligations of the union's leadership and membership, and in relationships between the putative bargaining agent, its affiliate, and the employer" Amoco Production Co. v. NLRB, supra.

In Pearl Bookbinding Co. (1973) 200 NLRB 834 [84 LRRM 1640] enforced (1975) 517 F.2d 1108 [89 LRRM 2614], the First Circuit

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[40]A corrallary issue raised by the question of continuity of representation is the question of contract bar rules. As the districts assert, the existence of contracts between such district and the respective chapters otherwise bar an election should there be a question of representation. See PERB regulations section 33237(b). However, it has long been held by the NLRB that certification amendment is not affected by a contract bar rule. Hamilton Tool Co. 190 NLRB 571. East Bay Farm & Tool & Die Co. (1971) 190 NLRB 557, Ocean Systems, Inc. (1976) 223 NLRB 857.

Court enforced the Board order where the latter had made findings that the newly affiliated local's "structure. administration, officers, assets, membership, autonomy, bylaws, size, and territorial jurisdiction remained the same; and the local continued to negotiate contracts with employers on behalf of employees it represented, and to administer collective bargaining agreements to which it was a party." See also Good Hope Industries a/b/a (1978) 230 NLRB 1132 [100 LRRM 1000] Fox Memorial Hospital (1980) 247 NLRB No. 43 [103 LRRM 1153]

The Third Circuit Court of Appeals has refused enforcement of NLRB orders in at least three separate cases where the court disagreed with the NLRB determination of whether there was a "continuity" of representation

In American Bridge Division U.S. Steel Corp. v. NLRB (1972 3rd Cir.) 79 LRRM 2877 the court determined that where by virtue of the affiliation, the local could not strike without approval of the international, grievances were filed by the international, dues are handled by the international, bargaining was done by the international, and the international would have the power to strike; said the court:

> . . . the very act of affiliation here is a commitment to change in the fulcrum of union control and representation. There is a clear departure from the former status of an independent union where local officers negotiated the contract, settled the terms, handled the grievances and decided when and when not to strike, and where employees in

> the bargaining unit alone fixed their dues, fines and assessments. Important powers thus have been transferred to the officers of the International Union who carry responsibility for the overall interests of the 1,120,000 members of the union and not necessarily the primary interests of the 304 salaried clerical and technical personnel at Ambridge.

There was, held the Court, a significant change in the identity of the representatives and a diminution in the rights of the bargaining unit's members.

In NLRB v. Bernard Gloeker Northeast Company (1976 3rd Cir.) 540 F.2d 197 [93 LRRM 2043], against a background of an international's efforts to oust the incumbent exclusive representative, the Third Circuit refused to enforce the NLRB's order, again differing with the NLRB's conclusions on the test of continuity. Relying on American Bridge, supra, the Court found the substantial control the international would have over the local with regard to grievances, strike determinations and financial resources as well as scope of concerns of the international versus that of the local, constituted a change in the organization sufficient to raise a question of representation.

In Sun Oil Co. of Pennsylvania v. NLRB (3rd Cir. 1978) 576 F.2d 553 [98 LRRM 2470], the same Circuit Court found that the international's constitution and bylaws superseded the local's control over strikes and strike benefits, required per capita tax payable to the International, authorization for the audit

of the local's financial records by the International and mandatory support by the local of any policy formulated by the national committee which is approved by 75 percent of the international's bargaining units. Coupled with the growth of interest and positions of national scope of the successor union's 200,000 members over 30 members in the local indicated to the Court that the successor was a distinct and new bargaining representative.

As noted by the California District Court of Appeal in North San Diego County Transit Development Bd. v. Vial (1981) 117 Cal.App.3d 27, not all federal courts have followed the strict test of the Third Circuit. In North San Diego, the Court noted that other circuits place greater emphasis on continuity of representation. The Court, adopting the test of Retail Store Employees Union, Local 428 v. NLRB (9th Cir. 1975) 528 F.2d 1225, 1228 [91 LRRM 2001], went on to adopt the reasoning of American Bridge, supra, stating "if there is continuity of representation, there is little likelihood there will be a schism with the original union, and internal fairness will be achieved by the federal practice."

In Retail Store Employees Union, Local 428, supra, the Court emphasized that "when an independent merges into a local of an international . . . retention of the same officers [is] important." since this suggests "continuity where it counts, in a bargaining relation . . . ."

In St Vincent Hospital v. NLRB (10th Cir. 1980) 104 LRRM 2289, the Court stated:

> When the same persons participate in communications with the company with respect to grievances, contract negotiations, and the like, continuity is likely to be preserved. Similarly in Continental Oil Co. v. NLRB, 113 F.2d at 477, where we held that the continuity of organization was preserved when a union shifted its affiliation from the American Federation of Labor to the Committee for Industrial Organization, we stressed that the officers of the union remained the same after the transfer of affiliations. (citation omitted)

At least two states have adopted the foregoing test for public employees successor unions. See L'Anse Creuse Public School. XV MERC 607 (1980) Case No. 679-B-47., Taylor County School District (1980) 6 FPER 1111 Case No. MS-005, 80M-083.

In L'Anse Creuse, supra, a case similar to the instant case, an independent joined an amalgamation of several other local independents. The Michigan Commission adopted the ALJ's determination that the employer's refusal to bargain with the new entity was not an unfair practice because the effected change shifted the control for establishing goals, policy making contract negotiations and ratification, authorizing job actions or withholding of services from the independent to the new entity.

All the districts attack the proposed amendment on the grounds of lack of continuity. From the foregoing evidence, the most salient evidence of change is as follows:

A new governance structure is established, whose officers and governing body is different than the officers and policy making body of the respective chapters. While the chapter officers and policy making bodies remain in existence,[41] they will not be the officers and policy making body dealing with the respective employer districts. Should the amendment of certification be granted, the employer would be required to deal only with the TU board and officers. However, the executive board is made up of the presidents from each of the chapters, the officers are elected at large, and the policy making body of the representative council is made up of the building representatives from each of the chapters. Moreover, the bargaining team is representative of the chapter by a majority of the members (of the five voting team members, three are from the chapter). These changes do not suggest an alteration in representation condemned even in the strict test applied by the federal court in the Third District.

The TU board now has the unqualified authority to revise the dues owed to them by the individual chapters. Whereas before, the dues set by the TU Board were subject to ratification by the respective representative councils, following the 1981 amendment, the TU board had the power to set the dues without approval of the respective chapters.

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[41]The bylaws as amended, expressly insure their continued existence that TU is not intended to supplant or replace similar member association governance bodies.

While it is true that TU gains complete autonomy to set dues to be imposed upon the members of each chapter, that differs little from the power of CTA or NEA to increase their share of dues. Moreover, TU had the power to set dues from its inception in 1978, subject only to the approval of the representative councils of the chapters. The new TU representative council is made up exactly as the chapter representative councils, i.e., composed primarily of the building representatives. The chapters retain power to set their own dues.

A third change is the composition of the bargaining teams of each of the locals. Whereas prior to the amendment in 1981, the bylaws of TU were silent on the matter, the 1981 TU bylaws provide for the constitution, selection and establishing of permanent members (two from the TU bargaining committee and Harju) plus three selected by the local chapter. The existing bylaws of each of the chapters provides for the constitution and selection of members of the respective bargaining teams.

A fourth change is the required "recommendation" of the bargaining team for withholding of services, approval of the local executive board, and "concurrence" by the Bargaining Committee.[42] The TU bylaws of 1978 did not address the

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[42]There is also required the affirmative vote of 2/3 vote of the members of the association seeking to withhold services.

question of withholding of services, but it is clear that the associations were autonomous from each other and could, each on their own, determine to withhold services without approval of outside entities such as TU.

In addition, members of one association may be called upon to withhold service, upon call of the TU executive board, provided that 60 percent of the members of each vote[43] and 60 percent of those voting in a majority of the affected members association vote in favor of withholding services.

The districts complain of the power of the TU Bargaining Committee to recommend approval or disapproval of a tentative agreement prior to its submission to the member association for ratification. It is clear from the change made by those responsible for drafting the bylaws that the mandatory approval as a condition precedent to ratification by the local chapter was changed to a discretionary provision - that is the recommendation of the Bargaining Committee is advisory only and the local chapter is not bound by the position of the Bargaining Committee. Thus, standing alone, the provision of the revised bylaws do not reflect a substantive change.

Moreover, while the present bylaws provide authorization for the TU Representative Council to adopt the initial TU

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[43]Thus it requires less votes to get chapter approval to withhold services on behalf of another chapter than for the instant chapter.

Bargaining Proposal and to establish goals and minimum settlement standards for TU contracts, and to develop procedures for monitoring negotiations, and for assuring that contracts reflect the adopted goals and settlement standards, there is presently no provision of the amended bylaws that require the chapters to accept either the initial proposals adopted by the TU Representative Council, nor is there a means provided for the enforcement of the goals or minimum settlement standards.

The districts also complain about the establishment of the Contract and Enforcement TU Contract Administration/Grievance Committee in the new bylaws. As presently written, however, that committee has no independent powers, but rather is charged to "work with the member associations," not to supplant the member associations standing with regard to contract enforcement.

The districts complain that the revised TU Bylaws allow for the possible domination by officers all from one member association. While it might be possible for one member association to have five votes on the Executive Board by election, the president, vice president, secretary and treasurer, plus the one representative from the chapter, that still constitutes only half of the Executive Board. That is not domination.

Thus, the overall change brought about by the transition affected here relates to the local's selection of their own total bargaining team, and the autonomy of calling their own strike. These represent but a portion of the factors employed by the NLRB and the courts to the test the continuity of representation.

In all other respects, the chapters continue to elect their own officers, process grievances, establish their own dues, select a portion of the bargaining team members who constitute a majority of the team and have ultimate authority over the approval of contracts with their respective employers. Too, the chapters will participate in the representation on the TU, both the board (each chapter president is on the board by virtue of office) and on the representative council (one from each building within each district). Given this retention of continued chapter representation, it cannot be said that there is a substantive change in representation.

The Elections

Numerous contentions are raised by the districts regarding the conduct of the elections. Although other reasons compel dismissing this petition, consideration of those contentions should be given to provide TU some direction (as well as other potential petitioners) as to what PERB might expect by way of election procedures.[44]

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[44]Particularly here, where TU might file an amended petition still relying on the election that took place on February 25 and 26, 1981.

The NLRB's standard for review of affiliation/transfer elections is set forth in Hamilton Tool Co. (1971) 190 NLRB 571 [77 LRRM 1257].

> While the election procedures . . . may not measure up to standards the Board demands for its own elections, . . . [they were not] so lax or so substantially irregular as to negate the validity of the election.

In Amoco, supra, (1978) 100 LRRM 1128, the Board explained its rationale for this position.

> Since we view an affiliation vote as basically concerned with the organization and structure of the union and not the representational status of employees, it is the sort of internal union matter into which the Board does not ordinarily intrude. The Board determines whether the vote was conducted with adequate due process; including, for example, proper notice to all members, an orderly vote, and some reasonable precautions to maintain the secrecy of the ballot. However, we have consistently held that "the strictures which [the Board] imposes on its own election proceedings are not generally applicable in proceedings to amend certification, or in proceedings [like] this involving [union] affiliation elections.

As with the question of continuity of representation the federal courts have differed with the NLRB's determination of propriety of elections. In NLRB v. A.W. Winchester Inc. (1978) 6th Cir. 100 LRRM 2971, the NLRB's efforts to enforce a section 8(a)(5) violation for refusal to bargain after an affiliation was denied on the Courts finding that NLRB's determination of the validity of the election was in error. The court found that employees were given no more than two days' notice of the

election, the election was conducted in an open room where others could see and there was substantial employee unrest over the affiliation decision.

In Bear Archery, (1977 6th Cir.) 587 F.2d 912 [95 LRRM 3904], the Court, applying principles enunciated in American Bridge, supra, concluded the Board's findings were in error and held that there had not been an opportunity to collectively discuss and consider the affiliation question, there was no membership meeting, the voting followed immediately after a presentation by the affiliating union and the balloting was not secret, but rather done in an open room where votes were marked at most eleven feet from observers.

In Fox Memorial Hospital (1980) 247 NLRB 11 [103 LRRM 1152] the Board continued to test elections under a broad test. Stated the Board:

> The vote in favor of affiliation was unanimous and conformed to the constitution of the Union and registered the desires of the members. Although the vote was not secret, the procedure was not so substantially irregular as to negate the validity of the vote. The Board has repeatedly held that the strictures which it imposes upon its own election proceedings are not generally applicable in proceedings such as this involving employee affiliation elections. What is important is giving effect to the employees' desires as evidenced by the unanimous vote. Respondent's employees were kept informed over a two-year period and did participate to the extent that they wished or to the extent that circumstances permitted. To

> refuse to give effect to the desires of the employees would amount to giving the Employer a right to veto the employees' choice of a bargaining representative. It is significant that none of Respondent's employees objected to the affiliation with the S.E.I.U. As stated previously, an affiliation vote is basically an internal union matter and we adhere to the Board's consistent policy of honoring the desires of the employees pursuant to Section 7 of the Act, which clearly grants them the "right to bargain collectively through representatives of their own choosing." The Board stated in Newspaper, Inc., Publishers of the Austin American and The Austin Statesman, 210 NLRB 8, 10, 86 LRRM 1123 (1974), enfd. 515 F.1d 334, 89 LRRM 2715 (5th Cir. 1975) . . . An Employer has no right of choice, either affirmatively or negatively, as to who will sit on the opposite side of the bargaining table." There is no question here as to the true desires of the employees and no question that the affiliation . . . . .

PERB's own elections will not be set aside unless it is shown that there is serious irregularity in the conduct of the election.[45] ERRB Rule 30076, Tamalpais Union High School District (1976) 1 PERC 1 PERB Decision No. 1. The aim of elections is to foster an environment in which a free election can be conducted. San Ramon Valley Unified District (11/20/79) PERB Decision No. 111, 3 PERC 10149.

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[45]PERB election procedures are set forth in title 8, California Administrative Code section 32720 et seq. Included therein are posting of notice of election in accordance with times determined by the Regional Director (section 32724). Rule section 32738 provides that objections to Board conducted elections will be entertained only on the grounds that the conduct complained of is tantamount to an unfair practice or there was serious irregularity in the conduct of the election.

In Jefferson Elementary School District (6/10/81) PERB Decision No. 164, 5 PERC 12082, PERB noted that it would not in every instance set aside an election on a charge of serious irregularity. Said PERB: While the election misconduct itself may be of a serious or weighty nature, it may not, under all circumstances, evidence sufficient cause to disturb the results of the election. Thus, as with objections based on conduct tantamount to an unfair practice, it is necessary to examine the alleged objectionable conduct and to determine if that conduct had a probable impact on the employees' vote. As recognized in San Ramon, supra, the objecting party is required to satisfy its burden of establishing a prima facie case that specific activities interfered with the election process to the degree of certainty set forth above.

The Districts raise several contentions attacking the validity of the election.

It's noted that the amendment of the TU bylaws was accomplished by a vote of the members of the local chapters, who were, at the time of the vote, not members of TU. The initial bylaws adopted at the formation of TU established it as an association of local associations and expressly provided for amendment of its bylaws by approval "for ratification by vote of approval of the policymaking body of all member

associations, to be effective either immediately or at such later time as is specified. . . ."[46]

Harju testified that there was an approval of the new bylaws by the representative councils in October and the TU Board in January 1981 adopted the revised proposed amendments flowing from teachers' input. This action was noted in the January 27, 1982 edition of TU Today.

In the absence of contrary evidence (none was offered by the Districts, nor was this point addressed in their post hearing briefs), it must be assumed that the rank and file vote on the amendment was proper. Moreover, expression by the rank and file teacher on the question of chapter alignment with TU is more persuasive of the preferences of the organization members than voting by the representative council of such organization.

The Districts complain that there was inadequate or no notice of the election given to teachers. While the evidence shows limited instances of actual posting of notices at building sites prior to the election, it is clear that such was not the general practice. Rather notice was given by publications issued either by the chapters or by TU. Here, teachers were alerted to timelines in the materials distributed to them regarding the project and given the specific dates of

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[46]See 1978 TU Bylaws at page 26, footnote 24.

the election in the January 27 edition of the Teachers United Today publication, nearly a month before the election. The meetings between the building representatives in November and December, and the TU board and TU Bargaining Council in late January and early February further facilitated knowledge about the forthcoming election. It is concluded that the teachers were given adequate notice of the election.

The Districts complain that there was inadequate discussion of the issue. There is ample evidence to controvert this contention. The teachers were given materials outlining the project in early November. They had meetings with the building representatives. In December of 1980 and January of 1981 discussion continued and resulted in teacher concerns being addressed by the TU. The board members and members of the bargaining team visited each of the sites in late January and early February to further afford teachers the opportunity to discuss the issue. Finally, TU distributed pro and con arguments addressing the issue. The foregoing shows ample opportunity to discuss the issue.

The Districts complain that there was no secret balloting provided. It is undisputed that there were no election booths provided, but rather ballots were marked in the same room with other voters or even with the building representatives. This evidence alone, however, does not render the process infirm. As was said in NLRB v. Commercial Letter Inc. 86 LRRM 2293, the

Board has yet to say that secret balloting is a required process.[47] Here, while the balloting took place in the presence of other teachers, the marking thereof was executed by each teacher according to his or her insistence on privacy. The ballots were folded before placement into the ballot envelope and there is no suggestion that tampering thereafter took place. Each of the building representatives maintained reasonable security over the ballot envelope during the times they possessed them. None of the building representatives who testified nor did Harju, the executive director of TU, receive any complaints about the manner in which the election was conducted.

There is no evidence here that voters complained of the balloting setting, or that the process impeded voters'

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[47]Compare American Bridge Division, U.S. Steel Corp. v. NLRB, where the 6th Circuit applied the test of "secret ballot" as equivalent to the board's union election process and to the requirement of section 101(a)(3) of the Labor Management Reporting and Disclosure Act of 1959, 29 USC 411(a)(3), requiring a secret ballot to approve an increase in the dues rate.

Said the Court, "Section 3(b) of the Act, 29 USC section 402(k) defines secret ballot as "the expressions . . . of a choice with respect to any election or vote taken upon any matters, which is cast in such a manner that the person expressing choice cannot be identified with the choice expressed. The Department of Labor which is charged with enforcing the same secret ballot provisions with regard to internal union elections, has taken the position that the definition in Section 3(k) requires that there be no possibility that any one would be able to determine how a member's vote was cast.

expression of their choice.[48] That there have been or are no complaints about the election by participants has been a factor by the NLRB. NLRB v. Commercial Letter Inc. (3rd Cir. 1972) 457 F.2d 660 [86 LRRM 2293]. Amoco Production Company (1975) 220 NLRB 861 [90 LRRM 1434]; J. Ray McDermott & Co. Inc. v. NLRB (1978) 5th Cir. 98 LRRM 2191. The testimony of Kinney relating to the numbering of ballots is credible that he did not look at the vote markings on the ballot when he ascertained the number. The numbering system was employed only to ensure veracity of the ballot. Moreover, the balloting process was the same as had been employed in other chapter elections, for officer and/or contract ratifications.

The Districts complain that the ballot did not describe the bargaining agent change and was therefore inadequate. There was, however, sufficient notice to teachers that the bargaining project did contemplate amendment of the bylaws and that the bargaining project included a change in the bargaining agent. That this was understood is reflected within those modifications made by TU as a result of teachers input in response to the initial promulgation of the project. Modification of the proposed bylaws, preserving chapters' ratification authority over agreements, that each chapter would

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[48]None of the chapter bylaws, requiring secret balloting, defines such procedure.

continue to exist and should be able to pull out of the project indicate awareness of bargaining agent change. The wording of the ballot did not alter the ramification of the amendment.

The Districts contend the TU election procedures did not preclude electioneering by coworkers or building representatives and that there were discussions by building representatives.

In Jefferson, supra, the Board acknowledged that "last minute electioneering is antithetical to the free and untrammeled election choice 'absent a showing of serious irregularity,' the result of an election should not be lightly disturbed or disregarded." It noted:

> The rule established by the National Labor Relations Board (hereafter NLRB) in Milchem, Inc. (1968) 170 NLRB 362 [67 LRRM 1395] against such conversations, regardless of the content, in order to avoid last minute electioneering or pressure and unfair advantage from prolonged conversations with waiting voters. This rule was adopted in the hopes of preserving the sanctity of the final minutes before an employee casts his or her vote. The NLRB also noted, however, that the application of this rule "will be informed by a sense of realism." While the content of the speaker's remarks will not be of critical concern, any chance, isolated, innocuous comment or inquiry "will not necessarily void an election."

The evidence revealed in the present record is of unsolicited inquiries by voters. Two or three voters asked one building representative what the election was on and were told that it was for the change in bylaws. Two or three voters

asked a building representative what the issue was and were told that the Executive Board recommended a yes vote, but that it was their decision to make. A couple of voters asked two other building representatives how they felt, and were told that they would have to decide for themselves. Such evidence does not demonstrate electioneering within the meaning of Milchem, supra, and constitutes, at most, brief responses to unsolicited inquiries. The Districts have not shown that any voters were affected by these responses, or that the conduct interfered with the election process or had a probable impact on the employee's vote.

The absence of rules promulgated by TU against electioneering is not itself irregular conduct and, in the absence of any showing of irregular conduct, such absence does not establish an infirm election process.

The Districts complain that some building representative posted results of the election prior to the end of the election period. While it is true that three of the building representatives conducted the election on Wednesday and posted the results of that election at the end of that day and that others held the election on both days (or on Thursday), there is no evidence that any persons at those buildings where the election took place on Thursday received any information about the results either from the sites of Wednesday elections or from TU. Hence, no harm can be drawn from the foregoing facts.

The Districts complain that the election results cannot be established because of the nature of the report offered by TU, (the Committee's report to the TU board dated March 11, 1981) and that the ballots were destroyed. The hearing officer allowed introduction of the committee report only as reflection of that report and not as substantial proof of the election results. This ruling, however, does not mean that the position regarding the election results is not acceptable. The TU board adopted the report of the Committee. That action is all that is necessary for TU to establish the outcome of the elections.

That TU destroyed the ballots has no bearing on the veracity of the election results. They were destroyed, as Harju credibly testified, because of the practice of destroying documents during the summer.[49]

The Districts complain that nonmembers were excluded from the vote. It is undisputed that none of the chapters or TU allowed non-local association members to vote in the 1981 elections. This fact should not invalidate the elections. As was stated in Amoco, supra, the question is one of an internal union matter, and the question is one properly passed upon by members only. In Amoco, the Board stated:

> The issue is whether an employer is relieved of its obligation to bargain with the union certified to represent its employees

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[49]The bylaws of two of the associations provide for destruction of ballots after 90 days following an election.

following that union's affiliation with another labor organization, if voting on the question of affiliation is limited to union members. The fact that union merger or affiliation votes are basically internal, organizational matters, coupled with the employees' opportunity to exercise their right to choose whether to participate or to refrain from engaging in concerted activity, persuades us to find that union affiliation votes limited to union members are valid.

An affiliation is the alignment or association of a union with a national or parent organization. An affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization. The organizations participating in the affiliation determine whether any administrative or organizational changes are necessary in the affiliating organization. The reasons for affiliation are diverse, but may include a smaller union's desire for bargaining expertise or financial support from a larger organization, or a lack of leadership within its own ranks. A larger organization should welcome the addition of assets and members. The motivation may be simply a belief in "strength in numbers."

But whatever factors motivate affiliation, affiliation does not directly involve the employment relation. The status of wages, working conditions, benefits, and grievance procedures is unaffected by the affiliation vote; the collective-bargaining agreement between the union and the employer remains effective until the stated expiration date.

Having no direct effect on the employment relationship, affiliation vote procedures, including the voting status of nonmembers, are internal union matters. Nonmembers may elect to retain their nonmember, nonvoting, nonparticipatory status, or, if they are sufficiently interested or concerned about an upcoming affiliation vote, they may become members and participate under normal

> union rules. That the option to participate in an affiliation election is not accorded to nonmembers differs little from their exclusion from other internal matters, including strike votes and contract ratification votes, and the selection of officers, stewards, and negotiators. But we have not found exclusion of nonmembers in those instances unlawful or incapacitating.

The single case holding membership-only elections infirm, Jasper Seating Co., Inc. (1977) 231 NLRB 1025 cited by the Districts, stands alone amidst contrary precedent and was overruled in by the Board in Amoco Production Co. (1979) 239 NLRB 1195. No discernable rationale suggest a different application of the Amoco rule to the EERA. Given the internal nature of an affiliation vote, PERB's sensitivity to noninvolvement in such matters, as discussed in Kimmet (10/19/79) PERB Decision No. 106, it is appropriate to employ the Amoco test. There were bi-annual drives to secure new members and the dues authorization form was the only condition precedent to membership and the right to vote. These circumstances further afforded all teachers the opportunity to join the union and to express their views via the ballot.

The Districts complain of the alleged "mispresentation" as described by the witness from Magnolia where Harju and the chapter president described the "opting out" process.

This argument falls in the analysis of the witness' testimony. She testified as to her impression of what they had said. She acknowledged that her understanding was that TU

would remain the exclusive representative and that Harju would still be at the table is consistent with Harju's testimony and the workings of the new bylaws "opt out" procedures. This evidence simply does not meet the magnitude of mischaracterization that would justify setting aside the election results.

The Districts complain that TU was in favor of the project. The evidence shows clearly the board majority was in favor, but it did take steps to prevent untoward publicity on that fact by giving signatory to members of TU who supported the project rather than to the whole board. As was stated in J. Ray McDermott & Co. v. NLRB (1978 5th Cir.) 98 LRRM 2194 the fact that the leaders support the affiliation transfer does not invalidate the results of the meeting they chaired. Said the Court:

> "The task of union leaders is to lead; they cannot be faulted for sponsorship of a particular program so long as their leadership is fair and protective of the union member rights."

Another argument advanced by the employers is the increase in the number of employees represented. A single employer in the present case, for example in Savanna, deals with an association with 68 members representing a unit consisting of 80 employees. Under TU, however, the combined unit represented is 2017 unit members and the association (TU) has 1525 members. There is no effort on the part of TU however, to

change the unit in any district. As noted, there would be five different contracts negotiated by TU, one for each district. Moreover, while the Third District Court may be impressed with the increase in size of employees represented by the successor union, see American Bridge, supra and Bernard Cloecker, supra, the NLRB is not influenced by such circumstances. See Montgomery Ward (1971) 188 NLRB 551.

The Anaheim Union High School District argues that these petitions seek to improperly merge the five presently certified district bargaining units into one regional bargaining unit without the consent of the affected districts, relying on Douds v. International Longshoremen's Association, 241 F.2d 278 (2d Cir. 1957, 39 LRRM 2388. They assert the general rule that neither a union nor an employer may expand the certified bargaining unit without the consent of the other party. While Douds does express that rule, its application thereof was to facts different than the instant case. There, the union, upon negotiations for a successor contract, was insisting that single contract cover employees in different ports not previously covered, but whose inclusion in the same unit had been determined appropriate by the NLRB in representation proceedings. In the present case, TU does not attempt to negotiate a single contract with all five districts but will continue to negotiate separate contracts with each of the five

districts, each contract addressing only the certificated employees of each district.

Moreover, certification of the five locals pursuant to their request will not result in a single unit represented by TU. Rather, should each petition be granted, five separate certifications would issue, one representing TU as the exclusive agent in relation to a single employer school district. The EERA simply does not envision multi-employer bargaining units. Section 3540.1(e) defines the exclusive representative as "the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer." Section 3540.1(j) defines "Public School employer" or "employer" as the "governing board of a school district, a school district, a county board of education, or a county superintendent of schools." These definitional constraints as well as the underlying theme of single employer as expressed in those provisions relating to rights of employes (section 3543) employee organizations (section 3543.1), impasse procedures (section 3545 et seq), and arbitration (section 3548) permeating the EERA clearly embrace the notation of a single employer-employee organization relationship insofar as certification is concerned.

Recognizing the rights of the employee organizations to engage in coordinated bargaining, including the discretion to

determine who sits at the bargaining table on behalf of the union, (see General Electric Co. v. NLRB (2d Cir. 1969) 412 F.2d 512), the District insists that those powers enjoyed by the TU go beyond coordinated bargaining. In support of this argument, the District relies on the TU Representative Council's authority to establish common bargaining goals and priorities, set minimum standards and determine ratification procedures for all districts, coupled with the bargaining committee review and approval of contracts before submission to the chapters. The power of the Representative council is, however, related to the source of proposals and expressly includes recognition of the input of proposals by the chapters.[50]

Minimum standards established by the council are not binding upon the chapters but advisory only. The provisions on ratification procedures, contrary to the Districts' contention, relate to ratification by the TU Bargaining Committee (still advisory only) not to ratification procedures of the chapters. Finally, the power of the TU Bargaining Committee to approve or disapprove a contract is only the power to recommend. The chapters are free to disregard the position of the TU Bargaining Committee.

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[50]Indeed the bylaw provisons provide that the initial proposal drafted by the TU "shall include such proposals as may be requested/required by the member associations. (section 8.3(c)).

The District further argues that the powers of TU to call a general strike and the required approval of the TU bargaining committee and bargaining team for a chapter to engage in strike activity surpasses coordinated bargaining. The TU executive board may call for the withholding of services in more than one member association, but such action requires the recommendation of the Collective Bargaining Committee, concurrence of the Representative Council and approval by 60 percent of the members of the affected chapter as well as 60 percent of those voting in a majority of the affected member associations. The chapters are represented on the executive board (each chapter president is a member) and officers are elected at large, and the representative council is made up of one person from each building site plus one for each additional 25 members or more at the site. The determination to call a TU wide strike is not without each chapter having representation in the decision making process and in the end still requires approval of 60 percent of the chapter members. Thus, each chapter determines whether to participate in the withholding of services. Moreover, the employer does not lose its right to preclude such action either by contract prohibition (two of the existing contracts contain no work stop provisions) nor its right to pursue unfair practice charges where such activity is unrelated to their district. That each chapter is required to have the approval of the collective bargaining committee to undertake

withholding of services is no more of an internal decision to reach that decision than a chapter determination to require 100 percent vote for such action. The District would have no more say in the latter than it does in the former.

In sum, the chapters remain intact, in governance and selection of officers. Their representatives on the negotiating team constitute a majority of the team. Their representative policy making body and the members retain final approval of proposed contracts. Their representatives will continue to process grievances. Whether the employer districts wish to form together for the purpose of negotiating with TU is left up to them, however the existing circumstances do not require them to do so. They will be negotiating with TU, but at the table only on issues demanded by the chapter, and through representatives of the majority of whom are selected by the chapter.

In summary, the Districts' objections to the amended certification should be rejected. With regard to the continuity of representation issue it has been found that the only substantive change has been the power to name the entire bargaining team member constitution, and the power to independently call strikes. Even under the strict view of the Third District courts, this change does not represent an alteration of the fulcrum of control. With regard to the conduct of the elections, employees had ample notice of the

proposed bargaining agent change, ample discussion and opportunity for change of the proposal (and effected such change) and expressed their views on the matter in a setting that did not give rise to serious irregularity. While this is not to say that the conduct of the election would serve as a model of future amendment of certification type elections, it cannot be said to fall so short of a process of employees expressing their views on the issue as to require PERB to ignore that view.

In sum, under the test of American Bridge Co, supra, the certified union does not oppose the amendment, indeed the president of each has filed the petition for the amendment; it has been found that the bargaining unit remains the same and there is continuity of representation; and that the chapters have (although local bylaws have yet to be amended) conducted an election on the issue giving unit members an opportunity to consider and vote on the question through a democratic process.

Disposition

It has been found that petitioners' request for amended certification is premature in that bylaws of the Chapters have yet to be amended to conform to the provisions of the TU bylaws as contemplated by the TU bylaws. It has been found that petitioners have affected an affiliation by the proceedings upon which their request is made. The petitions are thus improperly filed within the meaning of PERB regulation section

32763(b). It is appropriate to dismiss the petitions with leave to amend said petitions to provide petitioners an opportunity to complete elections for chapter bylaw amendments. To afford petitioners an opportunity to complete the chapter bylaws amendment it is appropriate to extend to them a period not to exceed six months for such transaction. Accordingly, petitioners shall have six (6) months from the date this proposed decision becomes final to amend their request for amended certification. Petitioner should further amend their request to reflect an affiliation. Such amendment should request that each chapter cetification state chapter/TU UniServ Unit/CTA/NEA.

PROPOSED ORDER

The petitions for transfer of jurisdiction filed by the Anaheim Elementary Education Association, CTA/NEA, Centralia Education Association, CTA/NEA, Magnolia Educator's Association, CTA/NEA, Savanna District Teachers Association, CTA/NEA, and the Anaheim Secondary Teachers Association, CTA/NEA, are hereby DISMISSED with leave to amend. Each of the petitioners shall have six (6) months from the date this proposed decision becomes final to file an amendment to their respective petitions for transfer of jurisdiction which amendment shall include the following:

1. Demonstration that such petitioner has, in accordance with the provisions of its chapter bylaws for such amendment,

amended its bylaws to bring them into conformance with the bylaws of Teachers United UniServ Unit, and

2. The request for amendment of certification is to show an affiliation of the employee organization with Teachers United UniServ Unit as opposed to transfer of jurisdiction to Teachers United UniServ Unit.

Pursuant to California Administrative Code, title 8, part III, sections 32763(d), 32350(a) and 32305, this proposed decision shall become final on June 14, 1982, unless a party files a timely statement of exceptions. See California Administrative Code, title 8, part III, section 32300. Any statement of exceptions and supporting brief must be actually received by the executive assistant to the Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on June 14, 1982, 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 PERB itself. See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.

DATED: May 24, 1982

F.A. Kreiling, Regional Director

By Gary M. Gallery

Gary M. Gallery
Administrative Law Judge