

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HEMET UNIFIED SCHOOL DISTRICT,)	
)	
Charging Party,)	Case No. LA-UM-459
)	
v.)	PERB Decision No. 820
)	
CALIFORNIA SCHOOL EMPLOYEES)	June 26, 1990
ASSOCIATION AND ITS HEMET CHAPTER)	
NO. 104,)	
)	
Respondent.)	
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Appearances: Best, Best & Krieger by Bradley E. Neufeld, Attorney, for Hemet Unified School District; Madalyn J. Frazzini, Attorney, for California School Employees Association and its Hemet Chapter No. 104.

Before Craib, Shank and Cunningham, Members.

DECISION

CUNNINGHAM, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Hemet Unified School District (District), to a proposed decision (attached hereto) by a PERB administrative law judge (ALJ). The exclusive representative of the unit of classified employees in the District, California School Employees Association and its Hemet Chapter No. 104 (CSEA), filed a unit modification petition requesting that certain job positions held by eighteen individual employees, and designated as confidential, be added to the existing bargaining unit.¹ The District opposed

¹A review of CSEA's unit modification petition reveals that CSEA relied on an incorrect provision of the PERB regulations. On its face, the petition, dated December 1988, indicates it was filed pursuant to PERB Regulation 32781(b)(5). Under the regulations in effect at that time, the provision in question

the unit modification petition on the grounds that all of the disputed positions were confidential, and that certain positions were also supervisory. The positions included in the petition are the following: Personnel Technician (certificated), Personnel Technician (classified), Confidential Secretary, School Office Manager I and School Office Manager II. Prior to the formal hearing, CSEA withdrew three of the eighteen positions from its petition. The ALJ found that five of the remaining fifteen disputed job positions were to be included in the existing bargaining unit on the ground that these positions were neither confidential nor supervisory within the meaning of the Educational Employment Relations Act (EERA).²

allowed an employee organization to petition for unit modification to delete classifications or positions not appropriate to the unit. (The provision relied on by CSEA is now found at section 32781(b)(4). PERB regulations were amended effective February 1989.) We note, for purposes of clarification, that the correct provision governing CSEA's filing in this instance is section 32781(a)(1). This section allows an employee organization to file a petition to add to the unit unrepresented positions. Inasmuch as the original petition was timely filed by CSEA, and not opposed by the District on the ground that it did not comply with PERB regulations, we find a correction of this nature to be nonprejudicial to the District.

²EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3540.1(c) and (m) states:

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

.

(m) "Supervisory employee" means any employee, regardless of job description,

The Board, after review of the entire record, adopts the attached findings of fact and conclusions of law, and affirms the proposed decision, except insofar as the ALJ finds office manager Jacquelin Pfannkuchen not to be a supervisory employee, and confidential secretary Nancy Kirschner not to be a confidential employee. The Board reverses the ALJ's holdings and order regarding these positions and, thus, partially denies CSEA's unit modification petition for the reasons discussed below.

DISCUSSION

In its exceptions, the District urges generally that the ALJ improperly ordered five of the fifteen disputed positions to be added to the bargaining unit. The District contends that the ALJ made numerous inaccurate factual findings, as well as various incorrect legal conclusions. These exceptions are discussed below.

Initially, the District argues on appeal that the parties' negotiated agreement regarding the office manager position,³

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

³The parties are signatories to a collective bargaining agreement effective from July 1, 1986 through June 30, 1989. Article 2 (Recognition) reads, in pertinent part, as follows:

and settlement agreement regarding the confidential secretary position,⁴ preclude CSEA from filing its current unit modification petition. As to the provision regarding office managers contained in the parties' collective bargaining agreement, the ALJ points to CSEA's argument that, pursuant to Article 17 of the collective bargaining agreement, unit placement disputes are to be resolved via petition to PERB.⁵ The ALJ further notes that the District's attorney conceded at the hearing that, regardless of agreements reached between the parties over proper unit

[T]he District recognizes the Association as the exclusive representative for the unit of employees consisting of all employees in the job classifications listed in Appendix A

The unit EXCLUDES noon duty supervisors . . . , principal's secretaries (Office Manager I and Office Manager II) and those positions which can lawfully be declared management, confidential and supervisory. Employees in the positions of Office Manager I or II as of October 23, 1986 may elect to become confidential. If an employee chooses to remain in the bargaining unit, the position will become confidential when the position becomes vacant. . . .

⁴The parties reached a settlement agreement on July 14, 1988, wherein they explicitly agreed that "the confidential secretary position currently held by Kirschner shall remain designated a confidential position. (See Exh. B to District's response to CSEA unit modification petition.)

⁵The language in Article 17 relied upon by CSEA reads, in relevant part:

In the event there is a dispute as to whether or not the position is to be included within the bargaining unit, either party may petition the Public Employment Relations Board for Unit Clarification.

placement of individuals, PERB is the appropriate body to make ultimate unit modification determinations. Although the ALJ does not expressly resolve this issue in his proposed decision, he does so implicitly in that he proceeds to address the merits of CSEA's petition, leading to his ultimate unit placement determinations.

The District's contention, that the parties' existing agreements should bind CSEA and be controlling in this dispute, is without merit. In fact, the testimony of the District's own witness accurately assesses this situation. That is, regardless of whether Article 17.2 was intended by the parties to apply in a case such as this, PERB is empowered to resolve any unit placement "disputes" and the parties cannot, by agreement or otherwise, divest the Board of such jurisdiction. A mutual agreement regarding unit placement is, by all means, permissible and desirable; however, if, at any time, either party decides it is not satisfied with the agreed-upon placement, a "dispute" then exists. At that point in time, PERB has the ultimate authority and duty to resolve the dispute. (See Regents of the University of California (California Nurses Association) (1989) PERB Decision No. 722-H.) In this particular instance, when CSEA filed its petition, CSEA disputed the previously agreed-upon placement of the office manager positions and the confidential secretary position. Accordingly, the ALJ properly resolved this unit placement dispute on its merits.

The District also contends, as to the office manager position, that the ALJ improperly "split" this position by excluding some individual employees from the unit and including others in the unit. The District claims that it must be able to rely on exclusion of the entire office manager classification from the bargaining unit, on a districtwide basis. The District argues this unit placement determination should not depend on the management style of an individual principal, the length of time spent in the position, or the individual office manager's ability to recall specific instances of exercising supervisory authority. Instead, the District claims this determination should be based on the position's authority, on a districtwide basis, to exercise or effectively recommend supervisory functions. The District relies on two PERB cases in support of this claim. It cites Campbell Union High School District (1978) PERB Decision No. 66 (Campbell), where PERB evaluated the status of all principals' secretaries within the district; and Sweetwater Union High School District (1976) EERB Decision No. 4⁶ (Sweetwater), where PERB also evaluated the status of principals' secretaries as a complete unit.

Moreover, as a policy matter, the District claims that failure to evaluate the status of the office manager position on a districtwide basis places the District and its administrators in an unreasonable and unworkable position. It claims that, just

⁶Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

because the current principal at any given school site does not utilize his or her office manager to his or her full capacity, a subsequent principal should not be "bound by" the earlier administrator's management style. The District also argues that the ALJ's "individual analysis" approach depends too much on timing and is, therefore, not an accurate determination of the position's true responsibilities. For instance, the District points to the case of employee Susan Bridwell, noting that, because Bridwell had begun to work in the school office shortly before the hearing was held, there had been little opportunity for her to engage in a significant number of duties and responsibilities associated with her position. Finally, the District claims the ALJ's approach punishes good administration, inasmuch as there may be no formal grievances or disciplinary actions at school sites where the office manager and principal are able to effectively work out employee problems on an informal basis.

An examination of the relevant case law reveals that the District's exception to the "individual analysis" approach is without merit. It is indeed true that the Board, in Campbell and Sweetwater, analyzed the classification of principals' secretaries as a whole in arriving at a unit placement determination. In Sweetwater, the issue presented to the Board was whether 22 school secretaries, all at different school sites, were supervisory and, therefore, were to be excluded from the unit. The Board determined that the position was not supervisory

and, therefore, ordered that all 22 positions be included in the unit. It appears from the Board's decision in Sweetwater that only a select few of the 22 school secretaries, as well as one principal, testified at the hearing. Much of the testimony focused on "typical" duties of the position. The Board did find, based on the one principal's testimony, that one school secretary performed some supervisory functions; however, the Board discounted this finding because of the lack of proof that any of the other secretaries performed similar duties. In Campbell, the issue was whether nine secretaries working for school principals at different school sites were confidential employees. Again, the Board analyzed the position in light of the whole picture based on testimony given by several of the nine school principals. The Board concluded this position was confidential and was to be excluded from the unit.

In contrast to the Board's approach in Sweetwater and Campbell is the approach taken in State of California, Department of Personnel Administration (CAUSE) (1989) PERB Decision No. 727-S (DPA). In DPA, a unit modification petition to add the position of State Park Ranger II to Unit 7 was filed by the union. The petition involved 91 positions, most of which were at different work sites. The hearing officer found that several of the 91 employees in this classification worked at the headquarter's office and had no subordinate employees reporting to them. It was determined that these particular employees were not supervisory and were, therefore, to be included in Unit 7.

Regarding those State Park Rangers II having subordinate employees, the hearing officer determined these positions to be supervisory and, therefore, partially denied the unit modification petition. The Board affirmed the hearing officer's unit placement determination, which was based on the same "individual analysis" approach as employed by the ALJ in the instant case.

Thus, there is PERB precedent supporting the "individual analysis" approach utilized in this instance. Moreover, while neither the Sweetwater nor the Campbell Board expressly addressed the issue of which approach is appropriate, the evidence indicated substantial uniformity in the duties of those in the disputed classifications. The approach utilized in this case is in keeping with the concept that the Board must look at the actual nature of the work performed by the incumbents in the position, rather than the work specified in the job description. (Marin Community College District (1978) PERB Decision No. 55, p. 17.)⁷ Accordingly, based on the above rationale, the District's exception to the ALJ's splitting of the office manager classification is rejected.

⁷We note that, in Calexico Unified School District (1990) PERB Decision No. 800, the Board held that, if it is clear from the evidence that an employee's actual duties are confidential in nature, but that the employee has not yet, at the time of the hearing, actually performed those duties on a consistent basis, there is, nevertheless, sufficient evidence of confidential status. The Board made clear, however, that such a finding cannot be based on mere speculation.

Another exception raised by the District is that no evidence was produced by CSEA supporting the necessary finding that a "community of interest" exists between office managers and the existing bargaining unit. The ALJ, in his proposed decision, does not address the "community of interest" issue. In support of this claim, the District argues that office managers are entitled to benefits over and above those received by the rank and file, and that there is no evidence in the record that any of the employees holding the disputed office manager positions ever requested that they be included in the unit.

The District's community of interest argument is without merit. Section 3545 of EERA provides, in pertinent part:

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees
. . . . [Emphasis added.]

In the case before us, the "appropriateness of the unit" is not at issue. Rather, the only issue presented is whether the disputed positions are "confidential" and/or "supervisory" within the meaning of section 3540.1(c) and (m). If these employees do not fall within the scope of this section, based on the actual nature of their duties, it is undisputed that they will be included in the existing unit. If the District's contention here, in the alternative, was that these employees actually belong in a different unit altogether, the issue of community of interest would properly be presented. As that is not the issue before us, the District's exception must fail.

The remainder of the District's exceptions relate to the ALJ's individual determinations. Accordingly, the ALJ's five determinations are examined below in light of the District's specific claims as to each employee.

Susan Bridwell

Susan Bridwell is an Office Manager II at Acacia Junior High School. At the time of the hearing, Bridwell had only been employed in this position as a permanent employee for approximately three and one-half months. At her job site there are two other clerical employees--an attendance clerk and a counselor's secretary. Bridwell is supervised by the principal and assistant principal at her school site, and she performs secretarial duties for both of these persons. The principal of Acacia Junior High School, Karen Doshier, testified at the hearing.

The District takes issue with the ALJ's finding that Bridwell does not, in the regular course of her duties, assign work to other employees in her office. The District argues that testimony of both Bridwell and Doshier supports a finding that Bridwell does indeed assign work to both clerical and substitute employees. Further, the District claims that Bridwell directs the work of the clerical staff in her office on a daily basis. Finally, the District submits that it is established by Doshier's testimony that the principal does provide input to the District's negotiations process, and when this is done, it is Bridwell's job

to prepare and provide such input to the District's negotiating team.

The District's exception is unsupported by the record evidence. The testimony of Doshier concerning Bridwell's current and future duties was specifically discredited by the ALJ. While the Board is free to consider the entire record and draw its own conclusions from the evidence presented, we will afford deference to an ALJ's findings of fact which incorporate credibility determinations. (Santa Clara Unified School District (1979) PERB Decision No. 104; Los Angeles Unified School District (Villar) (1988) PERB Decision No. 659.) The ALJ's credibility determination was based primarily upon Doshier's demeanor, and the record provides us with no basis for failing to give deference to this determination. Accordingly, we disregard the arguments raised in the District's appeal which are founded on Doshier's testimony.

Bridwell testified that she gives no specific assignments to her coworkers on a daily or weekly basis. She inspects the work of her coworkers, but only infrequently, such as when they perform work in relation to "special projects." When a teacher is absent, Bridwell calls a substitute from a preestablished list and tells the substitute where to report. As the ALJ found, there is no record evidence indicating that Bridwell exercises independent judgment in this regard. We therefore agree with the ALJ's conclusion that these facts are distinguishable from the facts involved in Sanger Unified School District (1989) PERB

Decision No. 752, where the evidence demonstrated the exercise of independent judgment on the part of the employees in the disputed classifications. At most, Bridwell acts as a lead person in her office, with no true supervisory authority, no control over personnel policies, but with some control over work processes.

(Office of Kern County Superintendent of Schools (1985) PERB Decision No. 533.)

Jacquelin Pfannkuchen

Jacquelin Pfannkuchen has been employed by the District for four years as an Office Manager I at Cottonwood School. In addition to Pfannkuchen, there is one other part-time clerical employee at Cottonwood, as well as several aides who work in the office at short intervals on a daily basis. Pfannkuchen reports only to the principal at Cottonwood; there is no assistant principal or counselor at her school site.

The District contends on appeal that Pfannkuchen clearly provides her principal with her subjective conclusions regarding the performance of other employees in her office. In addition, the District claims that Pfannkuchen supervises other employees at her site on a regular basis, especially because her school site is 23 miles from the District office and when the principal is gone from the site, there is no other administrator present. The District argues the ALJ wrongly concluded that Pfannkuchen has never been involved in disciplining an employee, argues the District. Rather, the evidence shows that she has been involved

in counseling employees, which is widely recognized as the first step in any progressive discipline system.

We agree with the District that the ALJ erred in concluding that Pfannkuchen is not a supervisory employee. There is evidence that Pfannkuchen falls within the scope of section 3540.1(m). The record shows that Pfannkuchen has the ability to effectively recommend hiring outside of the panel context. She has provided input to her principal in connection with evaluating employees. On at least one occasion an employee was subject to discipline, based at least in part on Pfannkuchen's input into a poor evaluation. Supervisory status is indicated where the disputed employee has the ability to effectively recommend the ultimate outcome of the evaluation process.

(Office of Kern County Superintendent of Schools, supra,
PERB Decision No. 533, p. 58.) Pfannkuchen has, in the past, counseled an employee to avoid the need for further discipline. Further, she assigns work to the other clerical employee in her office on a daily basis, even though the clerical is only a part-time employee. Because she is often left "in charge" when her principal is away from their outlying school site, Pfannkuchen exercises independent judgment in connection with most of these tasks. Although the ALJ correctly determined that Pfannkuchen is not a confidential employee, we find that she is indeed a supervisory employee and should, therefore, be excluded from the unit on that basis.

Mary Vaccarino

Mary Vaccarino is an Office Manager I at Hemet Adult School. Jim Smith, principal at the adult school as well as at an adjacent high school, is seldom present at the site, although he is always available to appear on short notice. Vaccarino is the only clerical employee at the site; she works along with three instructional aides, a long-term substitute who works part-time, campus supervisors and a custodian.

The District contends that Vaccarino is responsible for supervising various employees at her school site and, in so doing, exercises independent judgment. Additionally, it claims that Vaccarino assigns work to the school custodian because there is no head custodian at the site. There are no other exceptions aimed specifically at Vaccarino.

Vaccarino was correctly determined to be neither supervisory nor confidential by the ALJ. We agree with the ALJ's conclusion that her "supervision" of campus supervisors⁸ does not constitute "supervision" within the meaning of EERA. The record shows that Vaccarino's only function in this regard consists of asking campus supervisors to investigate situations that might appear to be out of the ordinary. The campus supervisors do not work in the office with Vaccarino and she does not actually assign or direct their work. The same can be said of her "supervision" of

⁸The "campus supervisors" at Vaccarino's school site are not "supervisors" within the meaning of EERA; rather, their sole function is to watch the grounds at the site.

the school custodian. If she sees something that needs to be attended to, she points it out to the custodian when he comes on duty. Accordingly, the ALJ's conclusions as to Vaccarino are correct and we affirm this portion of his proposed decision.

Laurel Long

Laurel Long has been an Office Manager I at Ramona Elementary School for two years. She is supervised by the principal and the assistant principal at her school site. In her office, there are three other clerks--two of which only work part-time.

The District claims that Long oversees and assigns work to three clerks and three noon supervisors, recommends discipline and hiring, and grants time off. The District takes issue with the ALJ's legal conclusion that Long is not a supervisor, inasmuch as the ALJ did find that Long assigns and oversees the work of the clerks and the playground supervisors. Further, the ALJ found that Long regularly and "independently" grants time off to other employees. Finally, the ALJ found that the principal has followed Long's "personal hiring recommendations" outside of the panel context "80 percent of the time." Thus, the District argues, the ALJ clearly erred in concluding that she is not a supervisor.

The District's exception to the ALJ's determination of Long's status is without merit. The ALJ correctly determined that Long's role in assigning work and "disciplining" other

employees is routine in nature. Although the ALJ does not clearly explain why he finds Long's assignment authority to be of a routine nature, we note that her testimony, taken as a whole, is exaggerated and internally inconsistent. Thus, we do not credit her testimony regarding her authority to "assign and oversee" the work of her coworkers. (State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S.) We find that she "assigns" only routine tasks to the clerks in her office, and does not function as a direct supervisor. There are both a principal and an assistant principal at her school site, who actually oversee the office. The few incidents referred to at the hearing, purportedly disciplinary actions, actually represent the types of actions a "lead worker" might take vis-a-vis his or her fellow employees. This evidence establishes that Long's authority or control extends to work processes, as distinguished from personnel policies and practices. (Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California (1983) PERB Decision No. 246b-H.)

Likewise, in granting time off to other employees for one day increments or less, Long simply exercises a ministerial function. The ALJ correctly found that the record does not indicate what weight, if any, Long's "personal recommendations" regarding hiring carry with her principal, since the evidence indicates that her recommendations are likely the same as the those submitted by the hiring committee. Moreover, the record

is unclear as to the actual hiring format, and the overall impression is that Long does not play a key role in the hiring process. Consequently, the record supports the ALJ's finding of no supervisory status, and we affirm this portion of the proposed decision.

Nancy Kirschner

Nancy Kirschner has held the position of confidential secretary at the District headquarters for five years. For three of the five years, the position was classified as a CSEA bargaining unit position. Kirschner's primary duties consist of handling all records for the District's special education students and processing all of the information received with regard to these students. She does not supervise any employees, but her superior, Director of Special Education Robert Gemar (Gemar), supervises approximately 18 certificated and classified personnel. Copies of these 18 employees' personnel files are kept in the special education department, and Kirschner has access to these files.

The District takes exception to the ALJ's conclusion that Kirschner has no regular involvement in the grievance process. The District argues that the ALJ appears to be attempting to punish good administration. It claims that because Kirschner's supervisor, Gemar, has had only one grievance filed in the past two years, this should not affect Kirschner's confidential status. There is no dispute that, regardless of the frequency

of grievance filings, it is Kirschner's job duty to maintain grievance files, take correspondence related to grievances and type grievance responses. Further, the District claims that the ALJ erred in finding that Kirschner has not handled negotiation materials for Gemar. On the contrary, the District claims that Gemar regularly handles confidential administrative materials relating to collective bargaining, including reports and memos concerning proposals, all of which Kirschner is responsible for as a matter of routine office procedures. Moreover, the reason Gemar has not been directly involved in negotiations during Kirschner's tenure is that Gemar has been unable to participate because of medical difficulties, a fact acknowledged by the ALJ in his proposed decision. The District claims that unrebutted testimony established that certificated directors are routinely rotated on to the District's bargaining team and that Gemar will indeed serve on the team in the future.

We agree with the District that the ALJ erred in concluding that Kirschner is not a confidential employee. The evidence shows that it is Kirschner's duty to type documents and handle correspondence relating to grievances, although her involvement has not yet been on a regular basis due to the lack of formal grievances filed. In addition to Gemar, Kirschner is the only employee having access to employee personnel files containing, among other things, grievance-related documents. Likewise, it is Kirschner's exclusive duty to gather information relating to grievances should Gemar request that she do so.

Although Gemar has not been on the bargaining team during Kirschner's tenure, on two different occasions thus far, Kirschner has gathered and prepared salary comparison information for Gemar. In view of the fact that Gemar has been kept off the bargaining team during Kirschner's tenure due to medical problems, and the fact that he is expected to be a member of the team in the future, this situation appears analogous to the situation presented to the Board in Calexico Unified School District, supra, PERB Decision No. 800. In Calexico, the Board held that the disputed position was confidential, in that undisputed testimony established that the actual duties intrinsic to the position were of a confidential nature, notwithstanding the fact that the disputed employee had not yet actually performed those duties on a regular basis. Here, Kirschner has held the position for five years; however, because of Gemar's health difficulties, she has not actually performed the full extent of confidential duties that are intrinsic to her position. We find that unrebutted testimony establishes that, in the regular course of her duties, Kirschner does have access to or possession of confidential information. This is sufficient for a finding that her position is confidential. (Calexico Unified School District, supra, PERB Decision No. 800; Imperial Unified School District (1987) PERB Decision No. 647; Unit Determination for Professional Librarians of the University of California (1983) PERB Decision No. 247b-H.) Consequently, we reverse this

portion of the ALJ's proposed decision, and find that Kirschner should be excluded from the bargaining unit.

ORDER

Based on the foregoing, the California School Employees Association's unit modification petition is DENIED with respect to the personnel technician positions of Joyce Mort (confidential) and Suzan Clark (confidential); the office manager positions of Janet Benson (confidential), Yvonne Palmer (confidential and supervisory), Lydia Olivas (confidential and supervisory), Anne Louise Moore (supervisory), Darleen Russo (supervisory), Susan McDonald (supervisory), Diane Treece (supervisory), Betty Jean Rogers (supervisory) and Jacquelin Pfannkuchen (supervisory); and, the confidential secretary position of Nancy Kirschner (confidential). The petition is hereby GRANTED with respect to the officer manager positions of Susan Bridwell, Laurel Long and Mary Vaccarino, as these positions are neither confidential nor supervisory.

Members Craib and Shank joined in this Decision.

PROCEDURAL HISTORY

The District voluntarily recognized the California School Employees Association and its Hemet Chapter #104 (CSEA or Union) as the exclusive representative of a unit of classified employees on May 3, 1976.² The unit description excluded "those positions which can lawfully be declared management, confidential, and supervisory."

On December 16, 1988, CSEA filed with the Public Employment Relations Board (PERB or Board) a petition seeking to add to the existing bargaining unit eighteen positions then designated as confidential. The disputed positions carried the following job titles: personnel technician (certificated); personnel technician (classified); confidential secretary; school office manager I; and school office manager II.

On January 25, 1989, the District filed an opposition to CSEA's unit modification petition, asserting that all disputed positions were confidential and that the office manager positions should be excluded from the unit on the further ground that they were also supervisory. A PERB agent conducted a settlement

them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

²Official notice is taken of PERB's file, LA-R-717, Hemet Unified School District. An administrative agency may take official notice of matters within its own files and records. Antelope Valley Community College District (1979) PERB Decision No. 97.

conference on March 1, 1989. The parties were unable to reach settlement, however, and a formal hearing was scheduled for May 3-4, 1989. On about April 28, 1989, CSEA withdrew three of the eighteen positions from its petition - those occupied by personnel technicians Judy Wenzel and Marilyn Shook and confidential secretary Jackie Velkoff.

After a continuance request from the District was granted, the undersigned conducted an evidentiary hearing at the District office on May 31 and June 1, 14, and 15, 1989. The parties filed post-hearing briefs after the close of the hearing. Upon receipt of those briefs on August 29, 1989, the case was submitted for proposed decision.

FACTS

A. Background

The Employer consists of several schools at different levels - elementary, junior high, high, and adult - and a headquarters office. The District office is located in Hemet, California, a rural community. Several of the schools are located many miles from the District office.

There are roughly 480-485 classified positions in the District. Of those, approximately 425 are bargaining unit positions. Of the existing positions, 366 were occupied by members of the classified bargaining unit as of May 1989.³

³I credit CSEA witness Robert Anderson's testimony that, based on documents he received from the District, there were 366 classified bargaining unit members. The District did not contravene Anderson's testimony, although it has possession of the personnel records with which it could have done so. Calif.

B. The Personnel Technicians

The District has a personnel department at its headquarters office which is housed in a trailer. Eight individuals work in that department - Assistant Superintendent for Personnel Services Daniel Zerebny; personnel technicians Suzan Clark, Joyce Mort, Marilyn Shook, and Judy Wenzel; two "substitute callers;" and Administrative Assistant Cindy Mesaros (a confidential employee).⁴ The four personnel technicians occupy one of the rooms in the personnel trailer. Zerebny's office is located in a separate office within the trailer.

Each of the personnel technicians performs some tasks which are similar to the others'. In the District's hiring process, for example, the technicians advertise vacancies, gather and screen applications, draft and administer tests for applicants, score the tests, and arrange employment interviews after the application and testing process. The four technicians are responsible for the personnel files of all District employees. The files contain documents such as medical records, disciplinary documents, grievances, credential information, etc. The technicians maintain the files and scrutinize what documents go in or are removed therefrom. They handle employee requests to view their personnel files. Personnel technicians also help

Evidence Code section 413.

⁴CSEA seeks to add Suzan Clark and Joyce Mort to the bargaining unit, claiming they are not truly confidential employees.

with the District's payroll and do some word processing work as part of their everyday functions.

A key responsibility of all technicians is interpreting collective bargaining provisions, District policy, and past practice. Many rank-and-file employees, site administrators, and District office personnel regularly call the technicians with questions covering a range of topics. The subjects include interpretation of leave provisions, health insurance, proper salary placement, appropriate job duties within classifications, retirement policies, course work approvals, grievance filing procedures, etc.

Wenzel's and Mort's work stations are situated back-to-back on one end of the office. This is done so each is aware of the issues and subjects the other is working on, in case one needs to cover for the other or help with the matter. Mort handles the personnel files of, and is primarily responsible for, classified employees with the last names beginning with letters a-l. Wenzel is responsible for classified employees and files with surnames beginning with letters m-z. Clark and Shook are primarily responsible for certificated employees and their files. Clark handles employees with surnames beginning with letters a-l, and Shook has m-z. Clark's and Shook's work stations are also placed in a back-to-back fashion on the other portion of the office. Occasionally, one of the personnel technicians will cover for the other three in those instances when only one is available in the office.

The salaries, benefits, and vacation credits received by the personnel technicians are separate and different from any classified bargaining unit position.

The technicians are supervised by Assistant Superintendent Zerebny, one of the District's collective bargaining representatives. Zerebny is responsible for negotiating with employee organizations during regular contract talks as well as when no official negotiations are in progress. He composes negotiating teams on behalf of the District, reports to management on the status of negotiations, and provides supervisors and administrators with training regarding contract administration.

Since the technicians have frequent contact and familiarity with issues and contract articles that cause concern among employees and supervisors, Zerebny involves them in the negotiation process. They began to participate in negotiation sessions in the 1981-82 academic year, when there were only two technicians. As the District grew in numbers of students and staff, two more technicians (Clark and Mort) were hired. Neither Clark nor Mort sat on the District's negotiations team before December 1988, the date CSEA filed its unit modification petition. However, Zerebny testified credibly that their involvement in bargaining was unrelated to the petition. Their involvement resulted from a combination of factors, including

Mort's inexperience and changes in Zerebny's job responsibilities between 1982 and 1988.⁵

All four technicians attend negotiations sessions as part of the District's team. They do not attend simultaneously, but are rotated in. They take notes and prepare minutes of the sessions for the District's team. They also participate in the team's deliberations during caucuses, where proposals and/or bargaining strategies are discussed.

The personnel technicians' involvement is not limited to face-to-face negotiations. They also help gather data in support of District positions - e.g., salary surveys, analyses of the cost of proposals or salary percentage increases, etc. In preparation for negotiations, they meet with other administrators to go over existing contract language to determine where and whether to propose changes.

Aside from negotiations, the technicians also perform grievance-processing duties. Specifically, Mort gathers data Zerebny uses to respond to grievances at his level. Sometimes,

⁵Mort became a permanent, full-time personnel technician in the summer of 1988. Zerebny had previously served as assistant superintendent for personnel services (his current position) up through 1983. He held other positions within the District and returned to his current position on July 1, 1988. It was Zerebny's idea to involve the technicians in direct negotiations in 1981/82. Clark has been a personnel technician for four years, and was hired during the interim period when Zerebny was not employed in his current capacity. When Zerebny returned in 1988, he continued with his earlier philosophy, but his first opportunity to put together a District negotiating team occurred in February or March of 1989. It was at about this time that Clark's and Mort's attendance at negotiation sessions began, although the other two technicians had previously attended.

the data is placed in a memorandum or a report to Zerebny. Occasionally, the technicians' work product is appended to the District's response. Both Clark and Mort type Zerebny's responses to grievances.

Finally, the technicians are involved in communications between employees and administrators, and between administrators regarding employee discipline. They handle telephone calls and inquiries on pending disciplinary matters, and type disciplinary materials.

C. The Office Managers

Office managers were previously known in the District as principals' secretaries. Unlike the personnel technicians, it is difficult to generalize about the duties of the office managers (levels I and II) despite their common job description.

The parties are signatories to a collective bargaining agreement effective from July 1, 1986 through June 30, 1989. Article 2 (Recognition) reads, in pertinent part, as follows:

. . . the District recognizes the Association as the exclusive representative for the unit of employees in the job classifications listed in Appendix A

The unit EXCLUDES noon duty supervisors . . . , principal's secretaries (Office Manager I and Office Manager II) and those positions which can lawfully be declared management, confidential and supervisory. Employees in the positions of Office Manager I or II as of October 23, 1986 may elect to become confidential. If an employee chooses to remain in the bargaining unit, the position will become confidential when the position becomes vacant

Pursuant to Article 2 above, many employees in the positions of office manager I (OM I) and office manager II (OM II) elected to become confidential. As of the date of the hearing in this case, there remained two employees in these positions who had not opted to become confidential - Linda Erickson and Tarri Whitby. These two office managers remain in the classified bargaining unit, while the other twelve were classified as confidential. The twelve - Yvonne Palmer, Janet Benson, Jacquelin Pfannkuchen, Betty Jean Rogers, Lydia Olivas, Darleen Russo, Laurel Long, Susan McDonald, Diane Treece, Mary Vaccarino, Ann Louise Moore, and Susan Bridwell - are alleged by CSEA to lack regular duties as supervisors or confidential employees. CSEA asserts that the parties agreed, under Article 17 of their collective bargaining agreement, that unit placement disputes were to be resolved via petition to the PERB.⁶

Most office managers are involved in three areas, in differing degrees, which require preliminary explanation. These areas are: access to and/or maintenance of personnel files,

⁶The language relied upon by CSEA reads, in pertinent part:

In the event there is a dispute as to whether or not the position is to be included within the bargaining unit, either party may petition the Public Employment Relations Board for Unit Clarification.

Attorney Charles Field, called to testify by the District, conceded that regardless of agreements reached between CSEA and the District over the proper unit placement of individuals, the PERB was the appropriate body to make those ultimate determinations.

participation in the hiring process, and attendance at monthly management (or "management council") meetings.

The office managers work at individual schools rather than at the District's headquarters office. Although the District office maintains all official employee personnel files, most, if not all, school sites keep files containing personnel documents for the employees who work at those schools. These files may contain documents such as periodic evaluations, disciplinary documents and, sometimes, copies of grievance materials. All office managers in question have access to the employee files kept at their schools, although their reasons for accessing them may differ.

There is a well-defined procedure for hiring staff at the individual schools. Applicants for these positions are interviewed by a team. The team's interview questions are based on standardized interrogatories issued by the District's personnel office for each job category. Each member of the team takes a turn in reading the questions. After the response is given, the panel member rates the answer numerically. At the end of the interview, the numbers are tallied and the applicant is given a score. The candidates are ranked based upon that score. The committee then makes a final recommendation on which recipients to hire. Although the principal has final authority on what recommendation to make to the governing board, the decisions are almost invariably made through the committee. Several office managers testified that their principals sought

their hiring recommendations apart from their role on the interview committee. However, they also testified that their personal recommendations never differed from the recommendation of the committee.

The school principal is usually, though not always, a member of the committee. The interview committee is made up of a variety of individuals besides the principal. Typically, the panels include a teacher, a rank-and-file employee with whom the candidate would be working if hired, the office manager, and assistant principals. The make-up of the committee may differ depending on the school and the nature of the position being filled.

The District conducts what are called "management meetings" on a monthly basis. No bargaining unit members are allowed to attend. Those permitted to attend are District office and school site administrators, employees classified as confidential, and supervisors. Attendance at the meetings is not mandatory for principals or office managers.⁷ Some office managers attend when their principals cannot. Others attend only if time permits. Still others attend regularly.

There was differing testimony about what is discussed at these meetings, particularly as it relates to negotiations with

⁷Susan McDonald, an office manager I for four years, has never attended a management meeting. She testified that she had not done so because she felt she needed to be at the school office. Jacquelin Pfannkuchen testified about her duties, but did not indicate whether she ever attended these meetings. The District did offer as evidence an exhibit which states generally that all office managers are "requested" to attend the meetings.

employee organizations. Laurel Long testified she attended three to four meetings since the beginning of the school year, but could not recall any discussions about negotiations involving CSEA's unit or the teachers' union. She could recall no discussions regarding negotiation proposals. In the two meetings that Susan Bridwell attended, she could not recall discussion about negotiations strategies. She testified that she had never been asked to give input on the subject of negotiations or on any negotiations proposals. Betty Rogers attended two such meetings during the school year and testified that no negotiations proposals or strategies were discussed. In those meetings attended by Janet Benson, she recalled only a status report on negotiations, but no discussion of bargaining strategies. She added that she was not asked for any input. On the other extreme, Anne Moore testified that, at some meetings she attended, negotiations proposals and District bargaining strategies were discussed. However, on cross-examination, it was apparent that she had difficulty understanding what "bargaining strategies" meant. Similarly, Darleen Russo testified that she recalled bargaining strategies being discussed in at least one meeting she attended the previous year. However, she could not recall the types of strategies discussed. She later acknowledged she was not sure what "strategies" are and could not recall whether the negotiations proposals discussed were tentative agreements or pending proposals. Mary Vaccarino was sure that negotiations were discussed at the meetings she attended, but

could not recall anything specific. Yvonne Palmer testified that bargaining status reports, as well as an indication of what direction the District and the union are expected to go, are given at these meetings.

All office managers testified that they felt free to give input during discussions on negotiations, but that they had never actually given any. Dan Zerebny testified that management meetings include updates on negotiations sessions, explanations of Union and District positions, and predictions of where the parties are likely to settle. Based on the entire record, it appears that negotiations are discussed at some, but not all, management meetings, that the discussion about negotiations is usually limited to reports and explanations of positions at the table, and that, occasionally, District representatives give opinions of what the District's team hopes to accomplish and where they may reach agreement. While the office managers have the opportunity to join in the deliberations over negotiations, their interest in the subject and their role at the meetings vis-a-vis collective bargaining, is simply that of an observer. Some office managers go to take notes for the benefit of their principals when the latter are unable to attend. The marginal role played by the office managers at the meetings explains why most could not remember, with specificity, any discussion about negotiations.

1. Yvonne Palmer

The degree of authority and the amount of discretion exercised by the office managers varies dramatically from school to school. Yvonne Palmer, the office manager at Hemet High School, was told by her principal that she was a supervisor when the principal was initially assigned to the high school. Palmer directs, gives assignments to, and conducts meetings of the 13-member clerical staff at the high school. She advises the principal's secretaries, who handle the payroll, over policies regarding time off for certificated and classified employees. She provides in-service training for those employees. She is part of a "management team" at the high school which also includes the principal and the three assistant principals. The team meets once a week to discuss, make recommendations, and set goals for the high school. Although there are three assistant principals at the school, only the principal acts as Palmer's direct supervisor.

Palmer inspects the work of the clerical staff. She periodically counsels employees about their job performance and points out where improvement is needed. She points out rule infractions to them directly if the principal is absent. The clerical staff go to Palmer for directions on proper office procedure and District policy. She is responsible for drafting the receptionist's evaluation, which may include comments Palmer thinks appropriate. Palmer goes over the evaluation with the principal before it is finalized. She and the principal conduct

the evaluation conference with the receptionist. Palmer sometimes types and/or reviews the evaluations of the remaining clericals. In one instance, Palmer was asked for and gave formal input on the evaluation of an employee (not the receptionist) who was asked to resign based on the evaluation. Her input is regularly sought during evaluations of clerical employees other than the receptionist.

Palmer authorizes employees' time off in situations where the principal is not available. In addition, she often makes recommendations to the principal on whether to grant sick leave, vacations, or overtime. The principal has always followed those recommendations.

Approximately six times during the 1988-89 school year, the principal asked Palmer for her recommendations on hiring personnel independent of Palmer's role on the interview committee. The principal followed Palmer's recommendation all six times. As a result, two secretary IIs, two clerk IIs, and two teacher aides were hired.

Palmer maintains the "personnel files" at the school site. She is also involved in grievance processing, mostly receiving grievances on behalf of the principal, conducting background research, and typing the grievance response. The last time she performed the above was during the 1988-89 school year, where Palmer reviewed District policy (contained in a collective bargaining agreement) and past practice in response to a written grievance. Palmer's research and recommendation were used by the

principal to deny the remedy (personal necessity leave or compensatory time off) requested by the grievant.

The principal for whom Palmer works is not involved in negotiations between employee organizations and the District. However, Palmer does attend the monthly management council meetings.

2. Susan Bridwell

Susan Bridwell was hired as an office manager II in October of 1988, first on a substitute basis, then on a permanent basis commencing in February of 1989. Before that, she worked as a substitute employee in the school's office. At Acacia Junior High School, Bridwell's job site, there are two other clerical employees, an attendance clerk and a counselor's secretary.

Bridwell performs clerical duties for the principal and the assistant principal. She has never been told that she is a supervisor. Bridwell testified there are two levels of authority over her at the school - the principal and the assistant principal. According to her testimony, she does not give the other two clericals specific assignments, but she does ask them to help her on certain duties and gives them tasks when they run out of work. If important reports are assigned to the other two clericals, Bridwell inspects the work for accuracy. She explained that she does not do this "as a regular course" of her functions.

Bridwell initially testified that she "supervised" a health technician and the school custodian. She later explained,

however, that by "supervision" she meant that she coordinates with him and gives him information on certain school functions so the custodian could carry out assignments. She added that the custodian's actual supervisor is the head custodian, who also works at the school, and that she does not direct the custodian's work schedule. When asked what she meant when she testified to supervising the health technician, she explained: "Well, I figure -- she doesn't really need supervising, per se; but she's willing to help out with -- as needed in the office and I figure if she's in the office, she's part of the office." When substitute teachers report for work at the school, Bridwell gives them instructions on where they are needed.

Although Bridwell sometimes types evaluation forms involving other employees, she does not provide her own comments and does not participate in the employee conferences except to arrange the appointment between the employee and the appropriate supervisor. Bridwell initially testified that her principal, Karen Doshier, told her that she (Bridwell) could discipline employees, but that she had not seen the need to exercise that authority. When asked to explain what the principal said, Bridwell testified that she would "take back" the earlier testimony as to what her principal had said. She did recall one incident where one of the office workers was distracting the others and had nothing to do. Bridwell testified that she approached Doshier with a recommendation to remedy the situation. Later, however, Bridwell talked with the employee and worked out the situation informally

without the need to recommend discipline. She also testified that she could recall no instance where her principal told her she had the authority to counsel or give oral warnings to classified employees.

Bridwell testified that she assumed that she had the authority to approve sick leave when the principal is absent. However, she did not testify that she had ever exercised that power. She did recall that no one had ever asked her for permission to leave work early. And, when employees were absent, Principal Doshier, not Bridwell, decides whether to call a substitute employee.

Although the school has hired other employees between October 1988 and the date of the hearing, Bridwell had not participated in the hiring process since the date she was first employed as an office manager. Bridwell played no part in the most recent hire of a supervision aide, which took place two weeks before the instant hearing. She testified that she has never discussed her role in the hiring process with the principal.

Bridwell has never been involved in the processing of any grievance, although she testified that it would be her job to type grievance responses if one came in. She speculated that she would gather information that the principal "might request" about a grievance. In response to a question eliciting the source of the authority for grievance processing, Bridwell first testified that Doshier had expressed it. When asked whether she was sure

that Doshier had told her that, Bridwell answered "no." She also added that she had never discussed "informal grievances" over the telephone with any employee.

Only the principal, the assistant principal, and Bridwell have access to employee "personnel files" kept at the school office. While Bridwell testified that the files may contain disciplinary documents and grievances and that she sometimes places documents in, and/or removes documents from, the files, there is no evidence as to why she accessed the files in any particular instance. She did not testify to accessing the files for grievance processing or negotiations reasons.⁸

⁸Doshier testified that the office manager's job included duties such as preparing documents connected with pending grievances and disciplinary matters, gathering information for responding to grievances, awarding employees with written or oral commendations, directing the work of other employees, "adjusting informal grievances" of employees, authorizing time off, and effectively recommending discharge actions. However, she cited no specific instance where Bridwell, or the previous office manager, ever exercised any of the listed duties, except one incident involving a purported adjustment of an informal grievance. However, that incident did not involve a grievance at all, nor did it involve Bridwell exercising independent judgment. Instead, Bridwell brought for Doshier's consideration and approval, a situation involving a problem where two employees' work breaks overlapped. In the area of assigning work and dividing up responsibilities among clerical employees, Doshier testified that she, Doshier, divides the responsibilities, but uses Bridwell's recommendations in this effort. Doshier speculated that, in the future, Bridwell would be involved in effectively recommending hiring, in the grievance process, and in the flow of communications between the principal and the District's negotiating team. She explained that the reason for Bridwell's minimal involvement to date was attributable to her inexperience in the job, adding that as Bridwell has "grown into the job", her levels of responsibility and authority have increased. However, there were no instances cited to support this contention. The fact that Bridwell was left out of the hiring process as recently as two weeks before the hearing belies Doshier's claim. In addition, on cross-examination, Doshier

Bridwell did not know whether her principal, Doshier, participated in collective bargaining negotiations on behalf of the District. Doshier testified that she was not on the District's bargaining team, but that principals are sometime asked for their input. However, Bridwell is not involved in the stream of communications between the District's team and Doshier. Doshier surmised that Bridwell would be so involved in the future. However, Doshier's explanation for not involving Bridwell in the past was not credible.

Bridwell attended two management council meetings since she became an office manager. She testified that she did not believe that negotiations strategies were discussed at those meetings, and had not given, or been asked to give, input on negotiations or proposals. She testified that she could not recall ever discussing negotiations with administrators or managerial personnel.

3. Janet Benson

Janet Benson, employed for over nine years with the District, is an office manager II at Hemet Junior High School. Not including her, there are seven clerical employees at that school. Although there are assistant principals at the site,

conceded that the office manager's authority and responsibility have not increased since February of 1989, when Bridwell became the regular office manager II. Doshier's other testimony that Bridwell possessed supervisory and confidential duties was general and imprecise. Based on her demeanor on the stand, the internal inconsistencies in her testimony, and the contradictions even with Bridwell's testimony, Doshier's testimony regarding Bridwell's responsibilities is discredited.

Benson is responsible only to the principal. She routinely assigns work to a clerk II, a clerk III, the records clerk, the library technician, the "ASB secretary," the health technician, and the attendance clerk. These employees report to Benson on the progress of their assignments and seek assistance through her when problems arise. When Benson has observed rule infractions by these employees, she has confronted them directly about them.

On numerous occasions, Benson has exercised the discretion to give clerical employees time off when the principal was absent or unavailable. The assistant principals, in contrast, rarely are involved in granting or denying time off for the clerical staff. Rather, it is common practice even for the assistant principal's secretaries to approach Benson for time off. Benson has given these secretaries time off without first checking with the assistant principals. Similarly, Benson has approved overtime for the staff.

Benson conducts meetings of the clerical staff. She presides over the meetings when the principal is absent.

As part of the hiring process, Benson has sat on the interview panels. Her principal has often consulted Benson for her hiring recommendations apart from the panel context. The principal's recommendation is usually consistent with Benson's personal advice.

Benson has gathered information for the principal in response to written grievances. She has consulted with the principal on the merits of grievances. In at least two instances

during the 1988-89 school year, Benson's information was used to formulate the principal's response to written grievances. Benson types the responses and maintains the files where grievances are stored.

Benson attends monthly management meetings at times. She did not recall anything specific about the topic of negotiations being discussed other than updates and overviews given by administrators. Although Benson's principal, Carroll Doolittle, sits on the District's negotiating team, he does not, according to Benson, discuss negotiations with her because Carroll "is not at liberty to share that" information with her, unless it is public information.

There are site management meetings at the school, which Benson routinely attends, but are off limits to classified employees. Usual topics of discussion include personnel assignments, where Benson has freely expressed her assessment of employees' (certificated or classified) performances.

4. Jacquelin Yvonne Pfannkuchen

Jacquelin Pfannkuchen, employed by the District for four years, is an office manager I at Cottonwood School, over 23 miles from the District office. Aside from Pfannkuchen, there is only one other clerical employee at the school, a secretary II who works one and one-half hours a day, five days per week. There are also several aides who work in the office for 15-30 minutes daily. There are no assistant principals or counselors at Cottonwood School. Pfannkuchen reports only to the principal.

Since the principal is frequently gone from the school, and due in part to the location of the school and the limited administrative staff, Pfannkuchen performs some administrative duties in the principal's absence. She gives assignments to the secretary II and to the aides. She counsels them when there is a problem. She has, on various occasions, approved time off for employees when the principal was gone. On one occasion she approved a sick leave request for the health technician because the principal was busy with other duties.

There have been instances where Pfannkuchen and the principal have been the sole members of the hiring interview panel. In other cases, the principal has asked her for her personal hiring recommendations outside the panel context.

In the area of evaluations for classified employees, there is some evidence to suggest that Pfannkuchen gives the principal input. However, the type of input appears to be that of relaying observations Pfannkuchen has made of the individuals involved. There is no testimony that Pfannkuchen formally writes comments on or gives ratings on the evaluation forms, as does Yvonne Palmer at Hemet High School. Nor does the testimony reveal that Pfannkuchen supplements her observations with her subjective conclusions or recommendations on how the employee should be rated on the evaluation form. The principal receives Pfannkuchen's input and issues his own evaluation, typed by Pfannkuchen.

Based on her own testimony, Pfannkuchen has never been involved in grievance processing. Cottonwood School's current principal does not take part on the District's negotiations team. There is no evidence of whether Pfannkuchen has ever been involved in the negotiations process.⁹

5. Betty Jean Rogers

Jean Rogers, a five-year employee of the District, is an office manager I at Alessandro High School. Rogers works alongside the only other clerical employee, an attendance clerk. There are campus supervisors and a resource aide also employed on the campus. Rogers reports only to the school principal. Rogers assigns work to the attendance clerk verbally and in writing on a daily basis. She also meets daily with the attendance clerk to review the work the latter is expected to complete for the following day. Rogers inspects the clerk's work and is the person the clerk reports to regarding any work-related problems.

When Rogers was hired, her principal told her she was a supervisor and had the authority to recommend discipline. Since then, Rogers has exercised her authority several times. With a

⁹The District offered as evidence an exhibit (Employer exhibit 11) which consists of answers to PERB's standard checklist of questions when a unit modification investigation is undertaken. Most of the responses for Pfannkuchen's position are general and apply to all office managers. For example, the exhibit repeatedly details grievance processing, investigating, and grievance file-maintenance duties to office managers. However, Pfannkuchen testified she had never been involved in the area of grievance processing. Other responses are conclusionary and do not give the requisite specificity upon which evidentiary conclusions can be reached. Although the document was admitted, there is little, if any, weight that can be attributed to it.

previous attendance clerk, Rogers issued several verbal warnings about the clerk's job performance. Rogers also counseled the attendance clerk about the problems. When the latter's conduct did not improve, Rogers recommended termination. As a result, the attendance clerk was discharged.

Granting time off for employees is another function which Rogers has exercised during her tenure as office manager.

Rogers was also involved in recommending the hire of the current attendance clerk. Her recommendations in that regard were given both in the interview committee context and outside that context via direct suggestions to the principal. In addition, Rogers selected an employee who was hired temporarily to deal with a backlog of work regarding student records.

Rogers routinely discusses with the principal proposed evaluations for the attendance clerk and the custodian. She will have a similar role with the evaluations of a campus supervisor and a newly-hired resource teacher aide. Rogers' involvement in the evaluation goes beyond merely typing the forms and relaying information to the ultimate evaluator, the principal. The deliberations with the principal include Rogers' views about the employees' punctuality, attitudes, ability to prioritize, and the proposed content of the evaluation form. In addition, Rogers' input takes the form of a completed evaluation form which is turned in to the principal. The principal often follows Rogers' suggestions. The final versions of the evaluations do not normally vary significantly from Rogers' draft.

Since Rogers has been an office manager, no written grievances have been filed. Rogers speculated, in her testimony, that if a written grievance were filed, she would be the one to gather information to formulate a response and would type the response for the principal.

Rogers does not attend many of the monthly management council meetings, having attended two within the last year. She does not recall discussion therein regarding negotiations strategy or contract proposals. Her principal, Jim Smith, is not involved in the collective bargaining process.

6. Mary Vaccarino

Jim Smith is also the principal for the Hemet Adult School. The adult school is adjacent to Alessandro High School, with only a basketball playground separating them. Smith is physically present at the adult school only about 3 per cent of his time. The remainder is spent at Alessandro High School. Rogers' counterpart at the adult school is Mary Vaccarino, an office manager I. Vaccarino testified that although Smith is seldom present at the adult school, he is always available and can be summoned "in very short order."

Vaccarino is the only clerical employee at that site. There are three regular instructional aides, a long-term substitute employed at less than full-time, campus supervisors, and a custodian also working at the school.

Vaccarino testified that she "supervised" the aides, the custodian, the substitute, and the two campus supervisors. Upon

closer questioning, however, it was apparent that her use of the term "supervision" varied from its meaning according to the EERA. It also appears that she exercises no independent judgment in this regard. Specifically, the aides work in the classrooms, not in the office. Their daily direction comes not from Vaccarino, but from the teacher to whom they are regularly assigned.

Although asked, Vaccarino could not come up with a single example indicative of her supervisory relationship with the aides. About the custodian, Vaccarino conceded that she does not assign his tasks on a regular basis. Rather, if she sees something that needs attention, she relates it to him. When asked to explain the types of directives she gave to the campus supervisors, she explained that when she saw someone or something unusual on the campus, she asks them to check on it. It is these supervisors' jobs to watch the grounds. There is no evidence that this type of request is different from what would be expected from any other employee who witnesses unusual behavior on the campus and reports it to those charged with the duty to investigate it.

Even with some prodding from District's counsel, Vaccarino could not attest to ever having counseled employees, verbally warned them, or issued any other form of discipline. She could recall only one instance where she thought she may have granted an employee time off without checking with the principal. She was even unsure of that incident. In another instance she gave tentative approval for an instructional aide to take time off

while she (Vaccarino) consulted with the principal. She checked with Smith and later told the aide that her request was approved.

There was some inconsistency between the testimony of Vaccarino and that of Smith regarding the evaluation process. However, the inconsistencies could be explained by the way Smith was questioned. Typically, the questions called for Smith to testify about the duties of both of his office managers, Vaccarino at the adult school and Rogers at Alessandro High School. Smith's answers often did not differentiate between the two. Therefore, in the area of evaluations, although Vaccarino testified to being somewhat involved, her involvement was much less significant than Rogers'. When asked to elaborate on her input, Vaccarino responded only that there was no reason not to give a good evaluation. She added that she did not sit in on the evaluation conference, but she did the typing of the evaluation form for the principal to sign. Neither Vaccarino nor Smith were able to give specific examples of the type of input given by Vaccarino in the evaluation process. Where Smith's testimony is inconsistent with Vaccarino's, it is not credited. Smith's testimony, attributing more authority for evaluations to Vaccarino, is not credited based on the testimonies of the two viewed together and upon his unsupported, conclusionary generalizations on the topic.

Smith also exaggerated Vaccarino's role in the hiring process, testifying that she "runs the operation" when he was away, that she "keeps the teachers in line, and actually "hires"

substitutes. Plainly, in context, Smith did not mean to imply that Vaccarino functioned as the certificated staff's supervisor. On cross-examination, he acknowledged that her role in hiring of substitutes was really that of choosing a substitute from a list of individuals already deemed qualified by the District office. She has no official role in creating that list. Vaccarino testified that the District office notifies her of who she can call to substitute. Her role in "running the operation" was more like coordinating different functions, not necessarily that of an administrator with independent authority.

Vaccarino was not sure whether Smith was involved in the collective bargaining process. She testified that she did not recall ever discussing negotiations subjects with him. Although she had attended every management council meeting held during the 1988-89 school year, she could recall no specific discussion about negotiations. Since no grievances were filed at the adult school during Vaccarino's tenure, she has never been involved in the processing of such.

7. Ann Louise Moore

Ann Moore has been an office manager I at Valle Vista Elementary School for two years. Excluding her, two other clerical employees and four playground supervisors work at the school. There are no counselors or assistant principals at Valle Vista. Richard Jeffrey, the school's principal, represents the only level of authority above Moore.

Jeffrey has expressly delegated to Moore the responsibility of supervising the clerical staff. Moore prioritizes and assigns work to the other clericals on a daily basis. When events during the day dictate, Moore changes the priorities. As part of her regular duties, Moore has approved vacation requests independently of the principal.

According to Jeffrey, Moore was instrumental in selecting and hiring those two clerical employees as well as the playground supervisors. Although hiring of regular employees is carried out via committee, that committee has consisted solely of Moore and Jeffrey for most non-certificated hiring decisions made in the last two years. Jeffrey has also routinely approached Moore about her hiring preferences outside the context of the hiring panel. He has usually followed Moore's recommendations. Moore decides regarding the hiring of long term substitutes independent of Jeffrey.

Moore has never had to issue written discipline to those employees whom she supervises. However, she counsels with them when the need arises, such as when reports or assignments are not turned in on time. In some instances, she recommended to Jeffrey the reassignment of members of the clerical and playground supervisor staff. Jeffrey made the suggested changes.

Moore drafts the clericals' and playground supervisors' evaluations. After Jeffrey's review, a final evaluation is typed up and sent to the District office. Moore and Jeffrey jointly conduct the evaluation conferences with the evaluatees.

Moore also types the evaluations of certificated employees, but does not have substantive input. In one instance involving the discipline of a certificated employee during the 1988-89 school year, Moore helped verify the data on the disciplinary documents and typed the final paperwork. Before having an office manager assigned to him, Jeffrey relied on the District office to maintain the school's personnel files, to verify and type disciplinary documents, and to type responses to formal grievances. Since Moore became his office manager, Jeffrey has given Moore the responsibility of maintaining the "personnel files" of the school's employees. These files house, among other documents, disciplinary writings and grievances.

The testimonies of Moore and Jeffrey conflicted directly on one major point. Moore (called to testify by CSEA) testified on direct, cross, and redirect examination there had been no formal written grievances filed at the school in her two years as office manager I. Jeffrey (called as a witness by the District) testified a grievance was filed in the spring of the 1988-89 school year and Moore typed the response. The grievance documents were not offered as evidence and no one corroborated either version. Based on California Evidence Code section 412 and United Auto Workers v. NLRB (1972) 459 F.2d 1329, [79 LRRM

2332], it is inferred that no formal grievances for which Moore has had any dealings have been filed during her tenure.¹⁰

Moore attends management council meetings every other month, taking turns with the principal. She recalled that at one of those meetings during the 1988-89 school year, negotiations proposals concerning the school calendar were discussed. Moore testified that although she has the opportunity for input at these meetings, she has never been asked to give, or given, input on negotiations. Her principal is not on the District's negotiating team.

8. Lydia Olivas

Lydia Olivas, currently an office manager I, has worked at Idyllwild Elementary School for twenty years. The school is located some 30 miles from the District office. In addition to the certificated staff, there is one clerical employee (a secretary II), a librarian, a health technician, custodians, substitute workers, cafeteria workers, classroom aides, and some yard (playground) supervisors employed at the school.

¹⁰Evidence Code section 412 states:

Party having power to produce better evidence. If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

The adverse inference rule described in United Auto Workers v. NLRB provides that when a party has relevant evidence within its control which he or she fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him or her.

The principal, Dick Glock, the sole administrator at the school, is away from the site on the average of one day per week. In his absence, Olivas "manages" the school, according to her testimony. Olivas directly supervises the secretary and indirectly supervises other non-certificated personnel. She plans the secretary's tasks and directs her in the performance of those duties. Olivas inspects the secretary's work when it is finished. She evaluates the secretary, although the principal signs the form. Olivas and the principal jointly conduct the evaluation conferences with the secretary. The principal usually seeks Olivas' recommendations when evaluating the health technician, the yard supervisors, and the classroom aides. The principal and Olivas jointly decide which staff members to grant commendations (in the form of certificates and awards) for good job performances.

When the principal is absent, Olivas approves employee requests for time off, including sick leave. She has occasionally granted such requests independent of the principal.

Olivas has given oral and informal written reprimands to employees. In one instance, she reprimanded the health technician for leaving the medicine cabinet unlocked.

In coordinating school functions, Olivas has instructed cafeteria staff to change the time they serve lunch, directed yard supervisors to rearrange their schedules, assigned the librarian to help supervise events and perform yard duty, and directed other staff members to temporarily cover a class that is

unsupervised for unforeseen reasons. It appears these duties are performed with little or no involvement of the principal.

In the area of hiring, Olivas has participated on interview panels composed only of herself and the principal. The principal often seeks Olivas' personal recommendations outside the context of the hiring panel. About two years before the hearing, the applicants for the health technician position were narrowed to two candidates. The principal obtained Olivas' personal recommendation on which one should be hired. Olivas and the principal had a similar discussion during the hiring of a custodian. At times, the principal has asked Olivas for her personal recommendations on the hiring of certificated personnel. Olivas' recommendations are usually followed by the principal.

Olivas is involved in grievance processing. After one grievance was filed in the fall of 1988, she investigated and gathered information preparatory to a response. However, before a response was issued, the grievance was resolved informally. The principal had told her she would be responsible for typing the response.¹¹

Olivas has also prepared material (at the request of administrators during a monthly management council meeting) used to develop a negotiations position on the topic of personal

¹¹When grievances are filed, they are stored in a locked file which is maintained at the school. Only Olivas and the principal have access to that file.

necessity leave.¹² This endeavor required Olivas to research and write a memorandum on when usage of such leave was the highest. The task also involved discussions with her principal on which negotiations stance should be taken on the issue. A proposal on the subject had not yet been drafted at the time of the hearing.

9. Darleen Russo

Darleen Russo, employed for 16 years at Hamilton School, has been an office manager I for two years. Hamilton is about an hour's drive from the District office. A secretary and a health technician also work at the school office, Russo's work location. There are no assistant principals employed at the school and Russo answers only to her principal, Carl Cripe.

Russo assigns work to the secretary, to the various aides also employed at the school, and to the yard supervisor. She and the principal jointly evaluate the health technician and the secretary, although the principal is ultimately responsible for the evaluation. As part of the process, Russo grades each employee from a list of choices on the evaluation form. Cripe also consults Russo for input on evaluations of employees who do not work directly under her.

Although Russo could not recall specific instances where she disciplined an employee, she testified that she was granted that authority by the principal. She had a general recollection of orally reprimanding employees and of an occasion where her

¹²Olivas testified she had thus far attended about four management council meetings in the current school year.

principal sought her advice on how to handle a disciplinary matter.

Russo testified that employees request time off through her. She sometimes grants those requests without prior consultation with the principal.

In addition to participating on the interview panels during the hiring process, Russo is often asked for her personal recommendations by the principal.

Although she attended monthly management meetings regularly the previous year, Russo only attended two in academic year 1988-89. Her principal is not involved in the District's negotiation process and neither is Russo.

Russo testified that she is not involved in the formal grievance process other than in the typing of responses which are dictated by the principal. It was not clear from her testimony whether she had in fact typed a grievance response during her tenure as office manager I.

10. Laurel Long

Laurel Long has been an office manager I at Ramona Elementary School for two years. Before that, she worked at the school as a secretary II. There are two levels of authority at the school over Long, a principal and an assistant principal. At the school office where Long works, there are also one full-time and two part-time clerks.

Long assigns work to (and oversees the work of) the clerks and three playground supervisors who work a portion of their

shifts in the office. Long testified that she had authority to discipline those employees to whom she assigns work. However, the illustrations she gave only minimally substantiated her conclusion. In one example, she testified that she recommended to her principal that one employee should get "some kind of reprimand." She added that the incident occurred three or four years prior, when she was a secretary II and in CSEA's bargaining unit. Giving another example, she testified that she once recommended to the principal that two playground supervisors be separated because they were talking to each other excessively rather than concentrating on work. No date was given to determine whether the recommendation occurred during her tenure as an office manager or whether it occurred when she was a secretary II. She recalled one recent incident when she directly told a secretary in the office to stop misusing a machine and explained to the secretary the proper way to use it. Long testified that the principal once asked her for a recommendation regarding the discipline of a secretary. However, her recommendation to the principal was that the secretary be given "more supervision." As a result, the principal talked with the secretary about the problem. She also testified that she would not make recommendations involving certain forms of discipline, such as dismissal, to her principal.

Long has granted employees time off, in isolated cases, without first checking with the principal or assistant principal. About once a week, she receives requests from employees to leave

work early. Long normally decides these questions independently, but if she has doubts, she checks with the principal.

In the evaluation process, Long testified that she gives her principal her opinion on classified employees "from time to time." She does not fill out or sign evaluation forms. She does type evaluations that the principal composes.

In the area of hiring, Long often participates on the interview panels. It is not uncommon for the panel to be composed solely of Long and her principal. In addition, the principal often seeks Long's personal hiring recommendations outside the hiring panel setting. Long testified that the principal follows her recommendations about 80% of the time.

Long's testimony about her involvement, as an office manager, in the grievance process was inconsistent. At one point she testified that she was involved in typing responses to grievances. She also stated that she discussed grievances with the principal. Upon further questioning, the only grievance Long could specifically recall typing was one which occurred six years prior, long before her tenure as an office manager. That was also the only incident about which Long could confirm that she discussed with the principal. When questioned about her involvement with the grievance process within two years of the hearing, she was equivocal and uncertain. She testified that she "believed there was one grievance filed" in that period, but did not recall the grievant or the issue. She added that she "was probably involved in typing" the response. Later, she testified

that she did not recall if she typed anything related to the grievance and could not recall the last time she typed a response to any grievance. When asked whether she counseled with the principal within the last year regarding any pending grievance, she initially answered "I'm sure I have." When pressed, she relented, responding: "I don't know. I'm not sure. I'd have to check the records and see." Based on the entire record and on her demeanor while testifying, it is concluded that Long has not been involved either in typing responses to grievances or in discussing pending grievances with her superiors during her tenure as office manager.

Long occasionally attends monthly management council meetings. In the three or four meetings she had so far attended in the 1988-89 school year, she could recall no discussions of negotiations or negotiations proposals. She did not know whether her principal was involved on the District's negotiating team. Nevertheless, Long testified that she and the principal never discuss negotiations.

11. Susan McDonald

Susan McDonald has been an office manager I at Whittier Elementary School for four years. At the school office where McDonald works, there is also an attendance clerk. The attendance clerk needs little, if any, supervision. McDonald testified that the clerk simply shows up in the morning and starts doing her job.

From time to time, the health technician and several playground supervisors perform clerical duties in the office. McDonald assigns some of these individuals duties and oversees the work when they are in the office. When any of these employees want time off, they usually ask McDonald. McDonald has counseled with the health technician about complaints from parents and/or teachers. McDonald has also counseled the attendance clerk about complaints from teachers and parents, about her attitude, and about the proper method for securing time off. Upon the request of McDonald's principal, she also gathered information for potential discipline of the school's custodian. After a conference between the principal and the custodian over work-related problems, McDonald typed a summary of the meeting and channeled a copy to the custodian.

McDonald has no formal involvement in the evaluation process. However, her principal sometimes asks for her input informally and McDonald types the evaluations after the principal drafts them.

In the hiring process, McDonald participates as an interview panelist. Outside the panel context, the principal sometimes seeks McDonald's personal advice. On several occasions, the principal has asked McDonald about applicants. In a few cases where McDonald has voiced disapproval of the candidate, the principal has declined to even grant an interview based on her advice.

Although McDonald speculated that it was her job to type responses to grievances, she testified there has not been a grievance filed at the school in the previous one to two years. Her conclusion that it was her job to type responses was not based on any experience in doing so, but on her observation that there was no one else at the school to do that. She recalled one incident she described as an "informal grievance" among teachers. There she acted as a facilitator in resolving a question about which teacher should act as the principal's designee when the principal was absent.

McDonald has never attended a monthly management council meeting. She testified that she is not involved in any way in the negotiations process.

12. Diane Treece

Diane Treece is an office manager at Hemet Elementary School. She works at the school's front office where an assistant principal, a principal, two secretaries, an attendance clerk, and a health technician also work. Treece plans the daily assignments of the health technician and of the clerical employees. She assigns and oversees their duties during the day. Based on her observations, Treece makes recommendations to the principal for incorporation into these employees' formal performance evaluations. Treece also counsels these employees about job performance problems.

Treece's involvement in the evaluation and disciplinary process of the four clerical employees has led, in one instance,

to the termination of the previous health technician. After noticing complaints from parents and teachers about that employee, Kennedy Jean Rocker, the principal, asked Treece for her recommendations. Rocker requested that Treece give examples to substantiate her advice. Rocker used the advice to counsel the health technician. Later, Rocker again approached Treece about whether the employee had shown improvement or if he should be discharged. Based on Treece's recommendation, the employee was terminated.

In the hiring process, Treece participates on the interview panels for classified positions. Apart from the panels, the principal routinely seeks Treece's recommendations about the hiring of other staff, including long-term substitutes. Rocker has also used Treece's recommendations in hiring the current health technician, the noon supervisors, and instructional aides.

Treece testified that she has never been involved in the processing of a written grievance. One grievance was filed during the 1988-89 school year, but Treece had no involvement with it. She testified that she occasionally gets involved in controversies which might lead to grievances. In those cases, she tries to talk the situation out with the individuals involved, before the problem matures into a formal grievance. In testifying about these instances, Treece was not able to specify about the issues or individuals involved.

Rocker testified that Treece maintains the personnel files of employees who work at the school site. The files are locked.

Only the principal, the assistant principal, and Treece have access to them. According to Rocker, the files contain, among other things, disciplinary and grievance documents.

Treece attends monthly management meetings when she can. She does not recall being asked to give, nor has she given, input on the topic of negotiations at these meetings. She did not know whether her principal was on the District's negotiating team. Notwithstanding that, she has never discussed negotiations proposals or strategy with her principal.

D. The Confidential Secretary

Nancy Kirschner occupies the position of confidential secretary and works in one of the buildings at the District's headquarters. Kirschner handles all the records for the District's special education students and processes all of the information that comes in about those students.

She has been a confidential secretary for five years. For the first three years, the position was classified as a CSEA bargaining unit position. Although Kirschner supervises no one, her superior, Director of Special Education Robert Gemar, supervises about 18 certificated and classified personnel. Copies of these employees' personnel files (to which Kirschner has access) are kept in the Special Education Department.

Kirschner is charged with typing and filing evaluation documents completed by Gemar for the employees under his supervision. Although Kirschner has no formal input into this process, she was once asked by Gemar to give her observations of

a classified employee. Similarly, Kirschner has no formal involvement in the disciplinary process of the Special Education employees, although she was once involved in typing and editing a disciplinary memorandum dictated by Gemar regarding a certificated employee. Kirschner could recall no other instance where she was involved in any disciplinary matter.

Kirschner has no regular involvement in the grievance process. She testified that Gemar had dealt with several grievances, none, however within the last year. She recalled having to type some documents and receiving correspondence about one of those earlier grievances. However, she conceded that the incident was some two years prior, at a time she may have been in the bargaining unit. She also acknowledged that her involvement in the grievance process was not on a routine basis. Although Kirschner explained there was no one else "in the Special Education Department" to perform clerical functions for Gemar regarding grievances, the department is only feet from the office where the personnel technicians, who do type grievance responses, are housed.

The District's counsel attempted to elicit testimony from Kirschner about her involvement in resolving informal disputes (loosely called "non-written or informal grievances") among Gemar's staff. However, it is apparent from the record that Kirschner exercises no independent judgment in this regard. Most often, she refers these controversies to Gemar.

Kirschner attends monthly management council meetings to take notes when Gemar cannot attend. Gemar has not been involved in the negotiations process during the entire time Kirschner has been working for him (five years). Although certificated directors (Gemar is one of three such directors) normally participate as members of the District's negotiations team, Gemar was excused from that duty due to a serious heart condition. Kirschner does not keep any negotiations materials for Gemar. District witnesses speculated that Gemar may potentially serve on the team in the future.

Kirschner testified that about a year and a half before the hearing, at Gemar's request, she collected and compiled data from other school districts in Riverside County regarding salaries for classified employees. It is not clear what was done with the data because Kirschner did not hear about it thereafter nor was she asked to make any recommendation regarding it. It is also unclear whether her work was done as part of ongoing collective bargaining or unrelated to negotiations.

In May of 1989, Kirschner typed a memorandum authored by Gemar and addressed to Assistant Superintendent Zerebny. In the memorandum, based in part on a recent salary survey, Gemar asked Zerebny to consider raising the salaries of a group of District employees - home and hospital teachers. Although Kirschner testified that the memorandum was not connected with negotiations, Zerebny testified that the memorandum will be used

in determining what the District's proposal for those employees will be in future negotiations.¹³

DISCUSSION

Under the EERA an employer is allowed to have confidential employees who are excluded from all negotiated units. Government Code section 3543.4. A confidential employee is anyone "who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations." Government Code section 3540.1(c). "Employer-employee relations" includes, at least, employer-employee negotiations and the processing of grievances. Fremont Unified School District (1976) EERB Decision No. 6.¹⁴

In a recent case, the Board approved the use of the National Labor Relations Board's "labor-nexus test" to further define the parameters of EERA section 3540.1(c). Upper Lake Union Elementary School District (1989) PERB Decision No. 736. The Board there held that:

¹³Employer's Exhibit 1 is misleading in several respects and is, therefore, not relied upon in making the factual findings above. As one example, the response to question number 10 from PERB's "confidential employee checklist" states that Kirschner has "regular access to confidential information concerning the effects of bargaining proposals." It is clear from Kirschner's testimony, however, that she keeps no negotiations materials for Gemar and that Gemar has not been involved in negotiations during the whole time she has worked for him. The answer to question number 11 leaves the impression that Kirschner is regularly involved in preparing materials for negotiations. Nothing in Kirschner's testimony suggests this is true. The contrary is indicated. The same erroneous impression is left from reading the answers to questions 12 and others that follow.

¹⁴The PERB was previously known as the Educational Employment Relations Board (EERB).

Confidential status is limited to (1) those employees who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations; and (2) persons who, although not assisting persons exercising managerial functions in the labor relations area, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. (See Unit Determination for Professional Librarians of the University of California (1983) PERB Decision No. 247b-H [7PERC 14107], p. 21.)

The mere access to or possession of confidential information by an employee is insufficient, by itself, to designate an employee as confidential. Campbell Union High School District (1978) PERB Decision No. 66. A confidential employee must function as such in the regular course of his or her duties. Ibid. "In the regular course of his or her duties" means that more than a fraction of the employee's time is spent on confidential matters, although the frequency of access to confidential information is not important. See Upper Lake Union Elementary School District, supra, PERB Decision No. 736 and Imperial Unified School District (1987) PERB Decision No. 647. The individual must have access to or possess sufficient information to warrant the conclusion that the employer's ability to negotiate with employees from an equal posture might be jeopardized, and the balance in employer-employee relations sought to be achieved by the EERA thus distorted, if the information was prematurely made public. Campbell Union High School District, supra, PERB Decision No. 66.

The Board recognizes that employers need staff support in preparing for negotiations - to perform research, prepare and type reports and proposals, keep records of these items, etc. However, because employees who are designated confidential are denied representation rights under the EERA, the Board has held that the number of confidential employees should consist of only "a small nucleus of individuals" who assist the employer in developing employer positions in the employer-employee relations arena. Centinela Valley Union High School District (1978) PERB Decision No. 62, citing Sierra Sands Unified School District (1976) EERB Decision No. 2. The small nucleus concept contemplates that only a small number of employees shall be given access to confidential information. Ibid. Employers, therefore, cannot unnecessarily distribute confidential information to large numbers of employees and then claim them as confidential. Ibid. Hence, the exclusion of confidential employees from statutory coverage dictates that section 3540.1(c) be narrowly construed. Los Rios Community College District (1977) EERB Decision No. 18, at p. 20. In reaching the conclusions below, it is noted that the District currently designates 24 out of roughly 72 clerical positions as confidential, and that the Employer is a growing district.¹⁵

¹⁵According to CSEA's exhibit 2, five administrative assistants, four personnel technicians, two confidential secretaries, twelve office managers, and one superintendent's secretary were designated as confidential as of December 1988.

Applying these guidelines to the case at hand, it is concluded that the personnel technicians Suzan Clark and Joyce Mort are confidential employees. On a rotation basis, each attends collective bargaining sessions as part of the District's team. They attend caucuses where the District's bargaining strategy and proposals are discussed. They take notes and prepare minutes of the negotiations. In preparation for negotiations, they meet with other administrators to go over the existing contract language to determine in which areas to propose changes. They also gather data relied upon by District spokespersons to formulate and make proposals at the bargaining table. Even without considering their other duties, the personnel technicians possess substantial information which, if made public prematurely, the employer's ability to negotiate on an equal posture with employee organizations would be jeopardized.

Additional duties routinely performed by the personnel technicians lends support to the above conclusion. Specifically, they gather data and type reports used by their supervisor, Zerebny, to respond to grievances. The technicians also type the responses. They maintain the files where the grievance documents are stored.

Finally, the technicians play a key role in management's administration of the contract and in interpreting District policy and practice. It is recognized that the PERB has earlier found that employees with roughly analogous "information

dissemination" duties are not confidential. Los Rios Community College District, supra, PERB Decision No. 18, involved "public information officers" who reported directly to the college president. They acted as management's communications officers to the campuses, assisting with inter-campus communications necessary for the day-to-day operation of the colleges, disseminating information (including discussions of campus regulations) obtained at chancellor's meetings, sometimes discussing disciplinary actions and grievances with the president, and attending management meetings where employer-employee relations were occasionally discussed. The Board nevertheless found that these responsibilities did not render the information officers confidential.

Here, the personnel technician's information dissemination function differs in nature and degree from the employees in the Los Rios case. In this District, Assistant Superintendent Zerebny relies on the personnel technicians to render management's interpretation of the applicable collective bargaining agreements on a daily basis. When the agreements do not apply, the technicians interpret District policy and/or practice. These interpretations are given to employees and other administrators and supervisors. These interpretations could result in employee's filing grievances and/or other complaints. Surely these contract administration functions render the personnel technician as "employees who assist and act in a confidential capacity to persons who formulate, determine and

effectuate management policies in the field of labor relations." Upper Lake Union Elementary School District, supra, PERB Decision No. 736. For all the foregoing reasons, CSEA's request to add two of the technicians to the classified bargaining unit is denied.

The status of the office managers, on the other hand, is not as clear. The Employer contends that these employees cannot be added to the classified bargaining unit because they are either confidential, supervisory, or both. A supervisory employee is:

. . . any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [Government Code section 3540.1(m)]

Since the definition of supervisor is written in the disjunctive, the performance of any one of the enumerated actions or the effective power to recommend such action is sufficient to render an employee a supervisor under the EERA. Sweetwater Union High School District (1976) EERB Decision No. 4; Office of Kern County Superintendent of Schools (1985) PERB Decision No. 533.

This precedent governing the definitions of confidential and supervisory employees will be applied to the following determinations.

Yvonne Palmer participates in grievance processing, on behalf of the Employer, by conducting research for grievance responses and by typing the responses. Merely having access to files which contain copies of employee grievances and the first level response is, in itself, insufficient to render that employee confidential, especially since the grievants themselves receive those documents. Dinuba Public Schools (1979) PERB Decision No. 91, at pp. 17-18 of ALJ decision; Campbell Union High School District, supra, PERB Decision No. 66, at p. 4. Here, however, Palmer has more than mere access to the materials. In performing her grievance processing duties, she creates grievance documents that are placed in the files and otherwise works with those documents as part of her regular job. Therefore, as part of Palmer's job, she has regular access to the District's position on the merits of pending grievances. This is the type of information potentially prejudicial to the District should it be made known prematurely to the employee organizations.

Palmer also possesses several indicia of a supervisor. The bulk of her duties differ dramatically from those of the other members of the 13-member clerical staff at the high school. Neither is the direction and guidance she gives them merely derived from her long tenure with the District nor her greater expertise and knowledge.

Palmer was expressly delegated oversight authority by the principal and has exercised it effectively. She participates on

the school's management team where local school policy issues are decided. Her duties in directing, assigning work to, training, counseling, giving admonitions over rule infractions to, and conducting meetings with, the clerical staff point to a regular exercise of independent judgment.

Input into evaluations of other employees, by itself, is insufficient evidence of supervisory authority. Modesto City Schools (1984) PERB Decision No. 384; Office of Kern County Superintendent of Schools, supra, PERB Decision No. 533; Cantua Elementary School District (1983) PERB Decision No. 295. It must also be shown that the evaluations by the disputed employee are relied upon in a manner which affects the terms and conditions of employment of the evaluatees - e.g., the alleged supervisor "effectively recommends the ultimate outcome of that evaluation process." Ibid.

Yvonne Palmer provides more than mere input. The evidence shows that, at least with respect to some of the clerical employees, the principal gives great weight to Palmer's evaluations and has institutionalized her role therein. Palmer formulates the receptionist's evaluation and conducts the evaluation conference of the employee jointly with the principal. While the principal has signatory authority over the evaluation, the record shows Palmer effectively recommends the ultimate

outcome of the evaluation.¹⁶ In one instance, her input resulted in an employee being asked to resign. In sum, Palmer possesses the ability to affect some employees' terms and conditions of employment through her active and regular role in the evaluation process.

Because the District's procedure for hiring at the individual schools is conducted using interview panels, and because Palmer did not testify that her separate recommendations ever differed from those of the committee, it is impossible to determine what weight is actually given to her recommendations. It appears likely that the principal approaches other panelists or employees outside of the committee setting as he does with Palmer. Therefore, it cannot be determined whether she can, outside the committee role, "effectively recommend" hiring. Hence, I do not rely on her role in the hiring process to find that she is a supervisor. See Sanger Unified School District (1989) PERB Decision No. 752.

It is also unnecessary to rely on Palmer's ability to grant employees time off. PERB has held that counselor-assistants to principals were not supervisors although, in the principal's absence, they routinely approved employee requests for time off. Modesto City Schools, supra, PERB Decision No. 384, at pp. 27-29.

¹⁶PERB has recognized the basic reality that in public school districts, final decisions regarding hiring, discipline, etc., are traditionally reserved to persons far removed from the employee's immediate supervision. Thus, the ability to indirectly effectuate decisions in these areas is accorded great weight in the public sector. Campbell Union High School District, supra, at p. 9.

The evidence in that case showed that the type of requests granted were for one day or a fraction of a day and that such requests were relatively routine. While it is possible that the power to grant time off in non-routine situations may indicate supervisory status, the evidence about Yvonne Palmer is insufficient to reach that conclusion.

For all the foregoing reasons, Palmer is properly classified both as a confidential and a supervisory employee as those terms are defined by the EERA. CSEA's request to add her position to the unit is therefore denied.

Susan Bridwell's principal does not participate on the District's negotiating team. Even occasional instances where principals give input to the team, the information is not discussed or shared with Bridwell. Her attendance at management meetings is not mandatory or necessary to fulfill her everyday functions. Certainly, her attendance there is not inherently connected to the District's labor-management negotiations. In essence, Bridwell has no role in the stream of communications between District representatives about collective bargaining. Neither has Bridwell been involved in the processing of a single grievance. She has never discussed even "informal grievances" with anyone.

Bridwell speculated that she would perform grievance processing duties in the future. Her principal also conjectured that she would be involved in the stream of communications between the principal and the District's negotiators about

negotiations topics. The PERB, however, has rejected such speculation to support the exclusion of an employee from statutory protection. In Los Rios Community College District, supra, EERB Decision No. 18, at p.21, the Board stated:

. . . Further, where an employee is not presently engaged in duties warranting exclusion from the unit as confidential, but merely faces that possibility in the future, the employee will be included in the unit.

PERB also requires that unit determinations be based upon findings about the actual nature of the work which is performed by the incumbents in the positions rather than in job descriptions. Marin Community College District (1978) PERB Decision No. 55, at p. 17.

Even assuming, arguendo, that potential involvement in the development of labor relations policy were a legitimate indicator of confidential status, Bridwell's tangential and occasional contact would be insufficient. Since her principal, Doshier, does not regularly participate in the negotiations process, does not regularly develop negotiations material, and does not regularly give input to the District's negotiations team, Bridwell's contact with such information would be occasional. Thus, Bridwell has no essential need to deal with such materials in the regular course of her duties. See Dinuba Public Schools, supra, PERB Decision No. 91.

Like Palmer, Bridwell has access to employee personnel files. Unlike Palmer, however, Bridwell does not access the files for reasons of grievance processing, collective bargaining,

or any other reason relating to labor-management relations. In finding principals' secretaries non-confidential, the PERB, in Dinuba, affirmed the following rationale of the administrative law judge:

In the present case, all secretaries to principals have access to employee evaluations, employee personnel records and student records. However, none of these materials relate to the negotiating process and all of them must be kept confidential for reasons apart from negotiations. Evaluations and personnel records must be kept private as a matter of good personnel practice and their disclosure might well subject a school district to legal liability for invasion of privacy. . . .

Moreover, neither employee records nor student records are "matters that if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture. . . ." Dinuba Public Schools, supra, PERB Decision No. 91, at p. 16.

The reasoning in the above case is applicable to this case, and lends support to the conclusion that Bridwell is not a confidential employee. Whatever contact Bridwell has with confidential materials is not connected to the negotiations or grievance process.

There is no credible evidence of Bridwell's supervisory status. Unlike Palmer, Bridwell's job, as a secretary to an assistant principal and the principal, is much more closely aligned with that of the other two clerical employees in the office. She has never been told she is a supervisor, is never approached by fellow employees for time off, and has had no involvement in the hiring process. Despite the recent hiring of

an employee, Bridwell played no role therein. She has played no meaningful role in other employees' transfers, suspensions, lay-offs, recalls, promotions, terminations, rewards, or discipline. She does not truly assign work to such people as the attendance clerk or the health technician since their duties are fairly defined. On occasion, Bridwell asks her fellow employees to help her or will give them work when they run out. All of these functions are ministerial or clerical in nature. Office managers who simply act as conduits for the principal and occasionally make routine assignments to other employees in a manner not requiring the use of independent judgment are not supervisors. Sweetwater Union High School District (1976) EERB Decision No. 4, at pp. 16-17.

When a teacher is absent, Bridwell calls a substitute from a District list and tells him/her where to report. This is also a routine reaction. See, e.g., Modesto City Schools, supra, PERB Decision No. 384 at pp. 28-29. Under some circumstances, the function of calling substitutes from a pre-determined list may, depending on a showing of usage of independent judgment and the existence of other supervisory indicia, be "some" indication of supervisory status. Sanger Unified School District (1989) PERB Decision No. 752, at p. 16. Here, the evidence regarding use of independent judgment connected with this function is virtually nonexistent and is not bolstered by other evidence of supervisory indicia.

At best, Bridwell acts as a lead person in the office, with no true supervisory authority over any fellow employee, no control over personnel policies, but with some control over work processes. Office of Kern County Superintendent of Schools, supra, PERB Decision No. 533, at p. 61.

As noted further above, evidence that Bridwell "might" perform quasi-supervisory or supervisory duties in the future was not credited. Even if it were, such would be insufficient to render her current position as supervisory. Los Rios Community College District, supra, EERB Decision No. 18.

For the foregoing reasons, it is concluded that Susan Bridwell is not a confidential or supervisory employee. CSEA's request to add her position to the unit is, therefore, granted.

Janet Benson plays a significant role in the grievance process by investigating and/or researching pending grievances on behalf of her principal, consulting with the principal on the merits of grievances, typing the grievance responses, and regulating what goes in or out of the grievance files. Thus, Benson has regular access to management's position on the merits of pending grievances. This is the type of information which, if made known to the grievant and/or the employee organization prematurely, would be prejudicial to the Employer.

The evidence regarding Benson's supervisory status, however, is insufficient to warrant a finding that she is a true supervisor. She acts in a lead capacity with her fellow employees in the office, regulating or coordinating work

processes. Although she sometimes gives assignments to the office employees, employees report to her on their progress, and Benson confronts them when she observes rule infractions, there is no evidence that Benson has the power to affect their employment status in any of these areas.

The distribution of assignments seems routine and part of the coordination function rather than requiring the use of independent judgment. The same is true about employees reporting the progress of assignments, since it is necessary for Benson's role in controlling the work process. Although she testified in general terms to confronting employees regarding rule infractions, there is no evidence whether her actions in any instance affected any employee's terms and conditions of employment. Her guidance to her fellow employees seems to be derived from greater experience, technical expertise, and knowledge of the tasks needed to be done. It is not derived from supervisory authority.

As with Palmer, there is insufficient evidence to conclude that Benson's granting time off to employees, when the principal is absent, indicates supervisory power. It appears that the type of time off granted is routinely requested and granted with no appreciable use of independent judgment. Likewise, whether to grant overtime to an employee, seems to be dictated largely by the workload needs of the office. There is no evidence that overtime is not routinely granted any time workload requires it.

Although Benson conducts meetings of the clerical staff, there is no evidence of what she does at the meetings. There is no evidence connecting her role therein to prioritizing or planning the work of her fellow employees. In addition, the principal appears to be in charge of the meetings, and Benson presides only when the principal is absent.

Like Palmer, Benson is asked for input in hiring apart from her role on the interview committees. As in the situation with Palmer, however, there is no way to tell from the evidence what weight the principal (who has the final recommendation power to the governing board) gives to her personal recommendations. Hence, the evidence does not indicate that Benson can effectively recommend hiring.

Similarly, while Benson attends site management meetings, where personnel assignments and employee performances are discussed, there is no evidence whether Benson's role or input affects the terms and conditions of employment of any fellow worker. The testimony about what occurs in those meetings was general and is insufficient from which to draw any conclusions about Benson's exercise of supervisory power.

Based on the above, it is concluded that Janet Benson is a confidential employee, but not a supervisory employee as those terms are defined by the EERA. The CSEA's request to add Benson's position to the unit is therefore denied.

There is no evidence that Jacquelin Pfannkuchen's job requires involvement in the negotiations or the grievance

process. Her principal is not on the District's negotiating team. Even if he were in the future, one cannot conclude from that fact alone that he would involve Pfannkuchen in the process.

The record does not indicate that Pfannkuchen oversees fellow employees as a true supervisor. The only other clerical employee in the office, a secretary, is in charge of attendance and works only one and one-half hours per day, while the other aides work there less than one-half hour per day. This leaves very little room for making non-routine assignments. The evidence in the record does not indicate she exercises independent judgment in what little time she has to give directives.

Although Pfannkuchen has granted time off for employees, it has been done in most cases solely because the principal was absent. She recalled granting it only once when the principal was at the school, and only because he was not available. In addition, the time off she testified to granting was of the routine nature, nothing exceeding a one-day absence.

By her own account, Pfannkuchen has never been involved in disciplining any employee. Although she may "counsel" the aides or the secretary, there is no evidence that any disciplinary action was involved in any incident or that the counseling was somehow part of the school's formal disciplinary process. The record does not show what, if any, significance the counseling had vis-a-vis the disciplinary system. Testimony about the subject was general and conclusionary, making it impossible to

determine what, if any, actual authority Pfannkuchen exercised or whether she effectively recommends discipline.

In the area of hiring, there is only unspecific evidence that the principal has sought Pfannkuchen's personal recommendations outside the interview committee context. The record does not reflect what weight the principal gave to any of her recommendations or whether the principal limited his inquiry to Pfannkuchen as opposed to other non-supervisory school employees. Hence, it cannot be concluded that she can effectively recommend hiring.

Evidence of Pfannkuchen's role in evaluations does not indicate that the principal relies on her input or that her input affects the terms and conditions of employees. Rather, she merely relays observations which, if the principal chooses, may be incorporated on an evaluation he separately composes. Otherwise, Pfannkuchen's only role in the evaluation process is that of typing the forms filled out by the principal, a routine clerical function.

For these reasons, Pfannkuchen's duties are neither supervisory nor confidential as defined by the Act. Her position shall therefore be added to the classified bargaining unit represented by CSEA.

The manner in which Betty Jean Rogers assigns work to the attendance clerk, the aides, and the campus supervisors evinces her use of independent judgment. She meets with the staff to review workload and to plan and prioritize their duties on a

daily basis. She inspects their work and issues verbal reprimands when their performance requires disciplinary action.

She has verbally reprimanded employees on several occasions. In at least one instance, a succession of verbal warnings by Rogers was followed by her recommendation for termination. The recommendation was carried out when the principal terminated the employee. The foregoing indicates Roger's authority to carry out lower level discipline and to effectively recommend discharge.

In the hiring context, there is no evidence from which to conclude what weight the principal gives to Roger's recommendations outside the interview committee context. Although Rogers unilaterally selected one temporary employee to work on a backlog, this appears to be an isolated case. Therefore, in reaching the conclusion that Rogers is a supervisory employee, no reliance is placed on her role in the hiring process.

Unlike Pfannkuchen and Bridwell, Rogers has an institutionalized role in evaluating employees. The record also shows that she deliberates with the principal on what the final evaluation should be, and drafts the actual evaluations. The principal gives great weight to Rogers' evaluations, evidenced by the fact that the final version rarely varies from her draft.

Rogers has no involvement in the grievance process. Her principal is not involved in the negotiations process. Rogers' job does not require regular attendance at management meetings where negotiations strategy may occasionally be discussed. Even

if she attended regularly, her role there is not tied to the negotiations process. The only other evidence about Rogers' status as a confidential employee was speculation as to what she might do in the future. As noted above, this is insufficient to exclude her from the Act's protection. Los Rios Community College District, supra, EERB Decision No. 18, at p. 21.

For these reasons, it is concluded that Rogers is a supervisory employee, but not confidential, as those terms are defined by the Act. CSEA's request to add her position to its bargaining unit is, therefore, denied.

Mary Vaccarino is neither a supervisor nor a confidential employee under the EERA. The three instructional aides, a long-term substitute, and the custodian are not under her direct supervision. The "assignments" she gives to the custodian and to the campus supervisors is routine and involves only relaying observations that call for those individuals' attention. These types of directions do not seem to depend on Vaccarino's position since the custodian and the campus supervisors no doubt receive these types of directives from other rank-and-file staff members.

Vaccarino has no power to discipline employees. She could not testify to any situation where she either effectuated discipline or effectively recommended the same. Her minimal involvement in granting employees time off involves the "approval" of requests that are routine in nature. In the only incident she could specifically recall, she checked with the principal before approving even a routine request for time off by

one of the aides. The evidence does not indicate exercise of independent judgment in these matters.

Vaccarino's involvement in the evaluation process is that of informal input and typing evaluation forms. There is no evidence that the principal attaches any weight to Vaccarino's informal input. Neither does the record show that Vaccarino has the power to influence, through her recommendations, the ultimate outcome of any evaluation.

The evidence of Vaccarino's role in hiring, in coordinating the functions of the adult school when the principal is absent, and of giving the teaching staff directions, does not indicate that she exercises independent judgment nor that she functions as employees' superior. Rather, her role gives her control over "work processes" as distinguished from personnel policies and practices. Office of Kern County Superintendent of Schools, supra, PERB Decision No. 583, at p. 61. There is no other evidence of the supervisory indicia enumerated in EERA section 3540.1 (m).

Vaccarino is not involved even tangentially in the collective bargaining process. She did not know whether her principal was involved, and could not recall ever discussing negotiations with him. Although she attends monthly management meetings regularly, her job does not require it. Even if those meetings contained discussions on collective bargaining, she could not recall any specific discussion on the subject. Vaccarino has never had to deal with any employee grievance.

Since Mary Vaccarino is not a confidential employee or a supervisor within the meaning of the Act, her position shall be added to the classified bargaining unit represented by CSEA.

Ann Moore's responsibilities over the clerical staff indicate she exercises independent judgment, not merely making routine assignments. This is evidenced by her planning, prioritizing, and changing, as she deems necessary, the daily assignments of the staff. In addition, the principal has expressly delegated to Moore supervisory responsibility for the office staff.

Moore has approved employee vacation requests independently of the principal. These requests cannot be regarded as routine, as are requests for a few hours of sick leave.

The record shows that Moore was instrumental in hiring the two other staff members she supervises. The principal testified that Moore was vital in hiring the playground supervisors and long term substitutes, notwithstanding the interview committee. Therefore, her recommendations in hiring these members of the staff are given great weight. This shows her ability to effectively recommend hiring.

Moore's role in the evaluation process of the classified employees is institutionalized. She drafts evaluations of some of the staff members herself. Although the principal reviews and signs them, Moore's recommendations are given great weight. Indeed, she and the principal jointly conduct the employees' evaluation conference. Moore, therefore, has the ability to

influence the actual outcome of the evaluation of some of the classified employees.

Moore has had no involvement with any grievance during her two-year tenure as office manager. Her principal is not on the District's negotiating team. She has never been asked to give, nor given, input to management on the topic of negotiations. In essence, her job does not require her attendance at meetings where negotiations or grievances are discussed among members of management.

It is thus concluded that Ann Louise Moore is a supervisor, but not a confidential employee as those terms are defined by the EERA. Her position shall not be added to the classified bargaining unit.

Lydia Olivas' position has supervisory and confidential indicia. The manner in which she oversees the clerical employee's performance evinces use of independent judgment. She plans the work schedule, directs her to perform various functions, and inspects the work product. Olivas' role in evaluating the secretary has been institutionalized. She actually writes the evaluation (although signed by the principal), and conducts the evaluation conference jointly with the principal. It is clear that her evaluation is given great weight and that she has the power to affect the ultimate outcome of the evaluation.

Olivas' recommendations regarding hiring appear also to carry significant weight with the principal, even outside the

context of the interview committee. In at least two situations where the committee narrowed the candidates to two persons, Olivas' personal recommendations were solicited and followed.

Although only one grievance has been filed at Olivas' school in the past two years, it is apparent that, when they are filed, Olivas has a defined role therein. In that one instance, Olivas investigated the grievance and conducted research in preparation of a response. The files where such responses and research materials are kept are locked and available only to Olivas and the principal. Her principal has expressed to her that these are her duties.

Olivas has been required to prepare information for use by the District in collective bargaining. Further, she has actively discussed what negotiations stance should be taken on the issues she researched. This is the type of information which, if prematurely divulged to employee organizations, would prejudice the Employer at the bargaining table.

For the foregoing reasons, it is determined that Lydia Olivas' office manager position is both supervisory and confidential within the meaning of the EERA. The position shall therefore not be added to CSEA's bargaining unit.

Darleen Russo presents a close case. The determining factor is Russo's participation in the evaluation process, where her input is given great weight. She evaluates the health technician and the office secretary, giving these employees a grade on their form. The principal signs off on the final evaluation, however.

Like Yvonne Palmer, Russo's role in the evaluation process has been institutionalized. Her principal has expressly delegated supervisory authority to her.

The evidence about Russo's assignment of duties to employees who do not work under her supervision and evidence that employees go to her with requests for time off is too general to draw conclusions about Russo's exercise of independent judgment in those areas. The same is true regarding Russo's role in the hiring process.

Neither Russo nor her principal are involved in the negotiations process. Russo has no role in the grievance process. There is inconclusive testimony that Russo believes it is her job to type grievance responses. That evidence alone is insufficient to render her a confidential employee. Even if she did type one grievance response during her entire tenure as office manager, it was not shown that such work is done in the normal course of her duties.

Thus, it is concluded that Russo is a supervisor, but not a confidential employee under the Act. The position she occupies shall not be added to the classified bargaining unit.

As noted in the findings of fact above, Laurel Long's involvement in assigning work and "disciplining" other employees does not require the exercise of independent judgment. Neither does the evidence show she can effectively recommend any supervisory powers listed in EERA section 3540.1 (m). Her job

resembles that of a "lead worker," more closely aligned with the rank-and-file employees than with managers or true supervisors.

Long grants time off to employees, but usually only when the principal is absent. The exercise of these duties is ministerial, since the requests are of a routine nature, usually only involving absences of less than a full work day.

There is no evidence that Long's recommendations in the evaluation process and/or in the hiring process are ultimately given any significant weight. Her involvement in the evaluation process is occasional, except the ministerial function of typing the evaluation forms. Since the hiring is done via committees, in which other rank-and-file employees also participate, it is difficult to assess what significance Long's personal recommendations carry, especially without evidence that Long's recommendation ever differed from the committee's.

Long has not been involved in the grievance process during her tenure as office manager. Although she may, at times, attend management council meetings, her involvement has not been connected with the District's negotiations process. There is no evidence that her principal is involved in negotiations. Even if she (principal) was, Long does not discuss negotiations with her.

For the above reasons, Laurel Long is neither a supervisor nor a confidential employee. Her position shall be added to the classified bargaining unit represented by CSEA.

Susan McDonald's involvement in the disciplinary process is significant. Her principal has deliberately delegated her

responsibilities which include issuing verbal reprimands and conducting counseling sessions with employees. It appears from at least one disciplinary incident involving an attendance clerk, that McDonald exercised independent judgment regarding the content and manner in which she conducted the counseling session. McDonald was a key component in another disciplinary action involving the custodian. There, she was an integral part at the investigatory level, the counseling session, and in follow-up to the session.

Another aspect of McDonald's job that evinces supervisory status is in hiring. Aside from her role in the interview committee, she has effectively blocked the hiring of some individuals by voicing her disapproval even before the interview committee was involved. The principal, giving great weight to McDonald's personal recommendations, declined to allow the employees involved to interview.

McDonald is not involved in grievance processing or in the negotiations process. She has never attended a management council meeting.

For the foregoing reasons, it is concluded that Susan McDonald is a supervisor, but not a confidential employee, as those terms are defined by the EERA. Accordingly, CSEA's request to include her in the classified bargaining unit is denied.

Diane Treece exercises independent judgment in the planning, assigning, and overseeing the work of the employees who work in the school office. She counsels them when rule infractions

occur. Her recommendations in the valuation and disciplinary process are given a great deal of weight. An employee was once terminated based on Treece's recommendation.

The evidence about Treece's role in the hiring process is insufficient to conclude what weight, if any, is given to her personal recommendations when hiring decisions are ultimately made by the principal.

Treece has never been involved in grievance processing. Although she can access files where grievance and disciplinary documents are stored, her job does not require that she do so for negotiations or grievance-processing reasons. She did not testify ever having accessed the files for these reasons.

Treece has occasionally attended monthly management council meetings, but her role had nothing to do with negotiations. Neither does she discuss the topic of negotiations with her principal.

Based on the above, Treece's job does not require her participation in the grievance or negotiations process. Her position, therefore, is not confidential. Treece is, however, a supervisor under the Act. Her position shall not be added to CSEA's bargaining unit.

The final position in dispute is Nancy Kirschner's "confidential secretary" position. Kirschner does not work with or supervise anyone, directly or indirectly. Even in the lone instance where her supervisor obtained her input to evaluate another employee, there is no evidence whether that input

impacted the evaluation. She possesses none of the indicia of supervisory status.

Kirschner provides clerical support for the director of special education. However, the director has not been involved in the negotiations process for several years. It is not known when, if ever, he will be so involved in the future. Even if he were to be involved later, one could only speculate as to Kirschner's role in that process. In one instance, Kirschner typed a memorandum dealing with salaries of home and hospital teachers. This was an isolated case and, at best, that the type of task, if performed in the future, will be occasional.

Although Kirschner attends monthly management council meetings, her role there is not connected to collective bargaining. She merely takes notes for her supervisor when he cannot attend.

Kirschner has no regular role in the processing of grievances. The evidence offered in support of finding Kirschner a confidential employee is centered largely upon her access to employee personnel files and dealing with disciplinary documents in those files. However, these documents are required to be kept confidential for reasons other than the negotiations process. Regular access to these records, therefore, is insufficient to exclude Kirschner from the protection of the EERA as a confidential employee. Dinuba Public Schools (1979) PERB Decision No. 91, at 16-17.

The record requires the conclusions that Nancy Kirschner is neither a supervisor nor a confidential employee within the meaning of the Act. Her position, therefore, shall be added to the classified bargaining unit represented by CSEA.

CONCLUSIONS AND ORDER

The personnel technician positions of Joyce Mort and Suzan Clark are confidential and shall not be added to the unit. The office manager positions of Yvonne Palmer and Lydia Olivas are both confidential and supervisory and shall not be added to the unit. Janet Benson's office manager position is confidential and shall not be added to the unit. The office manager positions of Betty Jean Rogers, Anne Louise Moore, Darleen Russo, Susan McDonald, and Diane Treece are supervisory, not confidential, and shall not be added to the unit. Accordingly, these positions are hereby DISMISSED from CSEA's unit modification petition. The following positions are not confidential or supervisory and shall be added to the unit effective the date this proposed decision becomes final: confidential secretary Nancy Kirschner; office managers Susan Bridwell, Jacquelin Pfannkuchen, Laurel Long, and Mary Vaccarino.

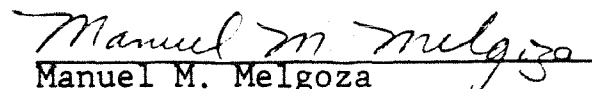
In context, although ten of the fifteen disputed positions will remain outside the bargaining unit, only five are being excluded on the basis that they are confidential, leaving a total of fifteen confidential positions District-wide. This result is consistent with EERA's purposes of allowing the employer clerical

support for labor relations matters, while excluding only a "small nucleus" of the employees from the Act's protection.

RIGHT TO APPEAL

Pursuant to California Administrative Code, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing" See California Administrative Code, title 8, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, sections 32300, 32305 and 32140.

Dated: . November 14, 1989


Manuel M. Melgoza
Administrative Law Judge