

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



MENDOCINO COUNTY OFFICE OF  
EDUCATION,

Employer,

and

MENDOCINO COUNTY FEDERATION OF  
SCHOOL EMPLOYEES,

Exclusive Representative.

Case No. SF-UM-585-E

PERB Decision No. 1505

December 24, 2002

Appearance: School and College Legal Services by Margaret M. Merchat, Associate General Counsel, for Mendocino County Office of Education.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Mendocino County Office of Education (MCOE) to the attached proposed decision of a PERB hearing officer. MCOE's petition originally sought modification of seven positions within the classified unit to confidential status under PERB Regulation 32781(b)(4).<sup>1</sup> By the time of the formal hearing on May 23, 2002, MCOE had

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<sup>1</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32781 provides, in pertinent part:

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

(4) To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by EERA, HEERA or Ralph C. Dills

withdrawn its petition with respect to one of the positions and the Mendocino County Federation of School Employees had withdrawn its objection to another. In his proposed decision, the hearing officer found that the Fringe Benefits Technician, Business Services Division met the requirements for being a confidential employee and should therefore be withdrawn from the unit but that the four clerical positions<sup>2</sup> should remain in the classified unit. The MCOE filed exceptions to the hearing officer's determination asserting that the four remaining positions should be deemed confidential and thus withdrawn from the unit.

After reviewing the entire record in this case, including the proposed decision, transcripts, exhibits, the parties' post-hearing briefs, and MCOE's exceptions, the Board adopts the hearing officer's proposed decision as the decision of the Board itself, expanded below to address MCOE's exceptions.

### DISCUSSION

MCOE excepts to the hearing officer's determination that the four disputed clerical positions should remain in the bargaining unit. MCOE continues to argue that its supervisors avoid assigning their secretaries "confidential" work out of consideration for their bargaining unit status and that those secretaries would perform confidential duties if they were determined

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Act, or otherwise prohibited by statute from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the recognized or certified employee organization, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

<sup>2</sup>These positions include the Administrative Secretary, Regional Occupations Program, the Administrative Secretary, Special Education Local Plan Agency (SELPA), the Program Secretary, Special Education Department, and the Program Secretary, Community and Alternative Education Programs.

by the Board to be “confidential.” MCOE further reasserts that if these individuals could perform confidential duties, it would be more convenient for MCOE because of the size of the county and the need for frequent travel by the supervisors of these disputed employees. There is no dispute that these individuals currently do not perform confidential duties.

Educational Employment Relations Act (EERA)<sup>3</sup> section 3540.1(c) defines a “confidential employee” as:

. . . 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.

Looking at long-established Board precedent on this issue, MCOE’s arguments fail to persuade us of the confidential status of these disputed positions. In Sierra Sands Unified School District (1976) EERB Decision No. 2<sup>4</sup>, at pp. 2-3 (Sierra Sands), the Board noted that a determination of confidential status deprives that individual of his/her rights under EERA.<sup>5</sup> Because of the serious impact of such a determination, an exclusion from a broad grant of rights under EERA must be strictly construed. (Los Rios Community College District (1977) EERB Decision No. 18, at p. 20.)

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<sup>3</sup>EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated all statutory references herein are to the Government Code.

<sup>4</sup>Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

<sup>5</sup>EERA section 3543.4 provides, in pertinent part:

A person serving in a management position, senior management position, or a confidential position may not be represented by an exclusive representative. . . . A representative may not be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position, senior management position or a confidential position.

Under EERA, the Legislature denied confidential employees their rights for the sole purpose of guaranteeing the orderly and equitable development of employer-employee relations. (Sierra Sands, at p. 2.) The Board thus assumes that the employer should be allowed a “small nucleus” of individuals to assist the employer in developing the employer’s positions in matters of employer-employee relations; that nucleus of individuals must maintain the confidentiality of those matters because if they are made public, it would jeopardize the employer’s ability to negotiate from an equivalent position. (Id.) The Board assumed that the denial of rights was balanced by a guarantee of a fair and balanced approach to bargaining. (Id., at p. 3.) As a bottom line, the employer was assured of the absolute loyalty of the nucleus of confidential individuals. (Id.)

In Fremont Unified School District (1976) EERB Decision No. 6 at p. 10, the Board established a standard that requires that confidential employees have access to and possess information about the employer’s employer-employee relations. Employer-employee relations includes, at least, employer-employee negotiations and the processing of employee grievances. (Id., at p. 11.) Further clarifying the standard for confidential status, the Board in San Rafael City High School District (1977) EERB Decision No. 32, at p. 3 (San Rafael), required the employee to have access to or possess confidential information in the regular course of duties performed. Although the frequency of these duties is not controlling, the access or possession must occur within the regular course of the individual’s duties and be more than a happenstance. (Id.) More than a fraction of the employee’s time must be spent on confidential matters. (Campbell Union High School District (1978) PERB Decision No. 66, p. 4, citing Los Rios Community College District (1977) EERB Decision No. 18 at p. 21.)

In addition, confidential status does not turn on whether the individual's functions may be transferred to others; instead, the Board must look to what the work actually entails.

(San Rafael, at p. 4.) In Centinela Valley Union High School District (1978) PERB Decision No. 62 at page 8 (Centinela Valley), the Board expressed concern that employers could exclude employees just by allowing them access to confidential information without essential need and thus permit easy abuse of the "small nucleus" concept found in Sierra Sands. In that case, the Board stated that it would examine in each case "whether the employees in question must necessarily have access to confidential information in the regular course of their normal duties." (Id., at p. 7, emphasis added.) When an employee is not currently engaged in confidential duties but merely faces the possibility in the future, the Board will not exclude the employee from the bargaining unit. (Los Rios Community College District (1977) EERB Decision No. 18, at p. 21.)

In two cases, however, the Board found employees who were not currently performing confidential duties to have confidential status. In Calexico Unified School District (1990) PERB Decision No. 800 (Calexico), the District had created a new position, Assistant Personnel Clerk (APC). The APC job description included maintenance of employee confidential files containing information necessary for formulation of bargaining unit proposals, and gathering and investigating information regarding employee grievances. The APC shared duties with her supervisor who already possessed confidential status. There was no evidence of actual involvement by the APC in grievances or bargaining; but up to that time, there had been no grievances against the District, and the union and the District were not currently engaged in negotiations. Based on the APC's job description and the

interchangeability of her duties with her confidential supervisor, the Board found the position to be confidential.<sup>6</sup>

In Hemet Unified School District (1990) PERB Decision No. 820 (Hemet), the disputed position involved a secretary to the Director of Special Education. Her duties included maintenance of grievance files, taking correspondence related to grievances, gathering information relating to grievances, and typing grievance responses. She is also required to handle, as part of her routine duties, confidential administrative materials that pertain to collective bargaining, including reports and memos about bargaining proposals. She has not performed these duties during her tenure, only because there had been no grievances and because her supervisor's medical problems precluded him from participating on the District's bargaining team during his regular rotation. The Board found the secretary to be confidential because she and her supervisor were the only employees with access to confidential files, it was the secretary's exclusive duty to gather information relating to grievances, her supervisor was routinely rotated onto the bargaining team, and she had prepared salary comparisons for her supervisor for bargaining purposes.

Unlike Calexico and Hemet, in this case, the supervisors of the employees in disputed positions deliberately prevented their secretaries from performing confidential duties. The supervisors were infrequently involved in confidential duties themselves; in fact Damon Dickenson, the Director of SELPA, had never participated in negotiations for MCOE. The job descriptions of the four disputed positions do not specifically identify confidential duties as part of the employees' responsibilities. Rather, MCOE's testimony focused on the

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<sup>6</sup>In Calexico, on page 7 at footnote 6, the Board warned of the danger of employer abuse of the "small nucleus" concept and noted that the union may challenge any confidential position if the employee is not actually performing confidential duties.

convenience of having these employees perform confidential duties because of the supervisors' extensive travel throughout Mendocino County and because of these employees' isolation from other MCOE units.

The issue of the employee's isolated location in this case may be distinguished from the facts in Imperial Unified School District (1987) PERB Decision No. 647 (Imperial), cited by MCOE in its post-hearing brief. In Imperial, the Board affirmed the same hearing officer's proposed decision that a newly created position of receptionist/clerk was confidential. The hearing officer found confidential status because of a combination of factors: she shared responsibilities with three other confidential employees; she performed duties involving employer-employee relations; and, her work station was isolated from other district facilities and employees. In this case, with regard to the four disputed clerical employees, MCOE has only provided evidence showing physical isolation from other MCOE facilities, which alone is not sufficient to confer confidential status.

MCOE also argues that in their supervisor's absence, these employees become an extension of their supervisors in dealing with other departments within MCOE and the public, except with regard to confidential matters. During these proceedings, MCOE presented no evidence of quantifiable burden to MCOE operations from the disputed employees' inability to perform such duties.

MCOE's arguments on appeal essentially parrot its arguments in its post-hearing brief. The hearing officer adequately addressed these arguments in his proposed decision.

In conclusion, MCOE did not present evidence sufficient to exclude the four disputed positions from the bargaining unit. These employees do not have access to or possess information concerning MCOE's employer-employee relations in the regular course of these

employees' normal duties. In light of the evidence, we hold that the two administrative secretaries and the two program secretaries should continue to be included in the classified bargaining unit.

#### ORDER

Based upon the foregoing, the Public Employment Relations Board finds that the Administrative Secretary, Regional Occupations Program, the Administrative Secretary, SELPA, the Program Secretary, Special Education Department, and the Program Secretary, Community and Alternative Education Programs, are not confidential employees under EERA section 3540.1(j). That portion of the unit modification petition pertaining to these positions filed by the Mendocino County Office of Education in Case No. SF-UM-585-E is hereby DENIED.

The Board also affirms the hearing officer's finding that the Fringe Benefits Technician, Business Services Division, is a confidential employee under EERA section 3540.1(j). That portion of the unit modification petition filed by the Mendocino County Office of Education in Case No. SF-UM-585-E is hereby GRANTED.

Members Baker and Neima joined in this Decision.



**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD**



MENDOCINO COUNTY OFFICE OF  
EDUCATION,

Employer,

and

MENDOCINO COUNTY FEDERATION OF  
SCHOOL EMPLOYEES,

Exclusive Representative.

REPRESENTATION  
CASE NO. SF-UM-585-E

PROPOSED DECISION  
(8/22/01)

Appearances: School and College Legal Services by Margaret Merchat, Attorney, for Mendocino County Office of Education; California Federation of Teachers by Brian Doyle, Field Representative, for Mendocino County Federation of School Employees.

Before Roger Smith, Hearing Officer.

PROCEDURAL HISTORY

On December 15, 2000, the Mendocino County Office of Education (MCOE or County) filed a unit modification request with the Public Employment Relations Board (PERB or Board). The petition, filed pursuant to PERB Regulation 32781(b)(4)<sup>1</sup> seeks to delete seven

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<sup>1</sup>PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32781 provides in relevant part:

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

(4) To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the recognized or certified employee organization, or

positions from the classified unit represented by the Mendocino County Federation of School Employees (MCFSE or Federation), as follows:

1. Administrative Secretary, Human Resources Division
2. Administrative Secretary, Regional Occupations Program
3. Administrative Secretary, SELPA
4. Fringe Benefits Technician, Business Services Division
5. Accounting Technician (Payroll), Business Services Division
6. Program Secretary, Special Education Department
7. Program Secretary, Community and Alternative Education Programs

On January 8, 2001,<sup>2</sup> the Federation responded to the County's request and argued that the petition was untimely filed due to the fact a tentative agreement reached on December 6, 2000, blocked the filing. On February 5, Labor Relations Specialist Jerilyn Gelt found that the petition was timely filed. A settlement conference on February 28 failed to resolve the dispute. A hearing was conducted on May 23 and 24.

Prior to the commencement of the hearing, the County withdrew its request to have the Accounting Technician (Payroll) deleted from the unit and the Federation withdrew its objection to the Administrative Secretary, Human Resources Division, being designated as confidential. Therefore, five classifications remained in dispute. The parties filed post-hearing briefs and the case was submitted for decision on August 8, 2001.

#### FINDINGS OF FACT

MCOE is a public school employer within the meaning of the Educational Employment Relations Act (EERA or Act).<sup>3</sup> The Federation is an employee organization and is the exclusive representative of a unit of all classified employees. The certificated employees of the County are also represented by the Federation. Prior to the filing of the instant petition

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(B) There is not in effect a lawful written agreement or memorandum of understanding,

<sup>2</sup> All dates referenced henceforth are calendar year 2001 unless otherwise noted.

<sup>3</sup> EERA is codified at Government Code section 3540 and following.

there were four confidential positions excluded from the classified unit. The MCOE employed 65 certificated employees and 86 classified employees in May.

MCOE provides services to eleven individual school districts that are spread over a large geographical area. The central offices of MCOE are located in Ukiah. All of the disputed positions work at the County's offices spread throughout several buildings on a multi-acre site called the River Center Complex.

The County's management structure is headed by the Superintendent with three divisions that report to that position. These three divisions are Business, Technology and Facility Operations headed by Assistant Superintendent Vicki Todd; Human Resources and Administrative Services headed by Assistant Superintendent Joseph Taylor; and Education Services headed by Dennis Ivey. There are 36 positions that are designated as program managers, specialists, directors, managers or administrators. These positions are excluded as managers or supervisors from either unit represented by MCFSE.

In providing services to the county and its eleven school districts, the MCOE program administrators spend significant time traveling to schools. Drive times can average one to two hours from site to site.

Assistant Superintendent Joseph Taylor is the primary contact between management and the MCFSE representatives. Mr. Taylor is the County representative at the negotiations table along with counsel. Other management representatives are rotated into the bargaining process on a year to year basis and also called in for specific subject matter negotiations, e.g., special education or Regional Occupational Program (ROP).

MCFSE represents both the classified and certificated employees at one negotiations table. The two units function as one union with one executive board. Both certificated and classified representatives participate on the negotiating team for MCFSE.

### Administrative Secretary, Regional Occupational Program

The ROP is a vocational education program for high schools but also provides adult education services. These services are provided throughout the county and include career and technical education toward certification in nursing assistance, welding and other subjects.

Nona Olsen is the current ROP Director. Approximately 35 certificated employees work in the ROP along with eight to ten classified employees. Samantha Travis is the Administrative Secretary to Ms. Olsen. Ms. Travis is responsible for all of Ms. Olsen's typing, filing, management of calendars, collecting and forwarding time off requests and generally is the clearing house for documents and information in the ROP.

Ms. Olsen has extensive travel involved in her assignment and often spends as many as ten to twelve days a month out of the office. In Ms. Olsen's absence, Ms. Travis has access to Ms. Olsen's electronic mail and reviews all mail but for that marked personal or confidential. On occasion Ms. Olsen has asked Ms. Travis to open and read her confidential messages over the telephone.

There are two other classified employees in the office Ms. Travis shares just outside Ms. Olsen's office. When Ms. Olsen is out of the office, Ms. Travis acts as lead person making sure the office is covered during lunch period. This has caused some difficulty because Ms. Travis has no authority to order a change in breaks or lunch periods.

Ms. Travis, in reviewing Ms. Olsen's mail and e-mail when she is out of the office, prioritizes the mail and actually responds to questions of a mundane or routine nature. Ms. Travis has no involvement in responding to employee or MCFSE grievances nor has she participated in any management meetings at which bargaining issues or contract discussions occur. Ms. Olsen has served on the County's negotiating team.

### Administrative Secretary, SELPA and Program Secretary, Special Education

The Special Education Local Plan Agency (SELPA) is a consortium of local school districts that act as a lead on policy matters which affect students with special education needs. In addition, the County operates its own special education program. The Director of the SELPA is Damon Dickinson. Mr. Dickinson supervises a staff of certificated and classified employees that service the needs of special education students throughout the county.

Paula Miller serves as the Director of MCOE's Special Education Program. She reports to Mr. Dickinson. The SELPA and Special Education offices are approximately 100 yards from each other in separate buildings at the River Center Complex. The two offices run independently of each other.

Mr. Dickinson's Administrative Secretary is Sharon Mallorich. Ms. Miller's Program Secretary is Sharon Foster. Ms. Mallorich and Ms. Foster both perform clerical functions including typing, filing, maintaining correspondence files, keeping track of office calendars and acting as primary contact in the office if the managers are absent. Due to the nature of the work performed at various sites throughout the County, both Mr. Dickinson and Ms. Miller are out of the office extensively.

Ms. Mallorich sits in SELPA Policy Council public meetings and takes minutes of those meetings. She keeps records and files of those meetings and all other correspondence that SELPA produces. However, Mr. Dickinson maintains his own personal working files that pertain to grievances or employer-employee related issues of a confidential nature.

Ms. Foster similarly maintains files for the Special Education programs run by the County. She does assist in the writing or copying of employee evaluations. Ms. Foster also acts as a conduit of information for both Ms. Miller and Mr. Dickinson as far as crisis situations involving parents of students and/or employees as she regularly takes the phone calls and monitors e-mail in special education.

Mr. Dickinson has yet to serve on the County's negotiating team with the Federation. He does, however, attend cabinet level meetings of the MCOE at which bargaining issues are discussed and managers are kept current on pending issues involving employer-employee relations. Ms. Miller has been brought into negotiations as a rotating member of the management team.

#### Fringe Benefits Technician

The Fringe Benefits Technician, Gladys Hunt, works in the Business Services Division of MCOE. Her immediate supervisor is Assistant Superintendent Vicki Todd. Ms. Hunt's desk is just outside the office of Superintendent Paul Tichinin. Also in the office with Ms. Hunt are the Superintendent's Administrative Assistant, Nancy Hasslock and Assistant Superintendent, Financial Services Administrative Secretary, Donna Menne. The desks of these three employees are within ten to fifteen feet of each other.

Ms. Hunt's duties include administering the benefit plans that MCOE provides its employees as well as acting as a coordinator of benefits for a joint powers agency of school districts in Mendocino County called Staywell. Benefits that the MCOE provides include health, dental, vision and life insurance programs. The Staywell program is responsible for approving health insurance coverage each year and promoting wellness of the employees in the member districts.

Ms. Hunt answers questions of MCOE employees dealing with their benefits program as well as employees of other Staywell member employers. She works with brokers in establishing rates and also with Blue Shield to insure employee benefits.

In addition, Ms. Hunt provides backup support for the two administrative secretaries she works alongside. She has been asked to provide information to MCFSE regarding premium increases or changes in benefits. She has also been asked to provide information relating to individual employees and what benefits they may be receiving.

### Program Secretary, Community and Alternate Education Programs

Kathleen Tindle is the incumbent in this position. She reports to Peter Kostas, Director of Court Community and Alternative Education Programs. These programs serve expelled probation-referred and habitually truant students, and students at Juvenile Court. In addition, this department administers a program for pregnant and parenting teens, Clean and Sober Classroom, Tobacco Use Prevention grants, HIV-AIDS Education grant and the Healthy Start program.

Ms. Tindle manages the office in the absence of Mr. Kostas who travels throughout the county quite regularly. She manages Mr. Kostas' calendar in addition to monitoring the employees at the 12 different sites throughout the county. Due to the fact that Ms. Tindle is not confidential, Mr. Kostas has typed his own grievance responses, employee separation documents and annual employee evaluations.

Mr. Kostas has participated in negotiations with the Federation. Ms. Tindle has not assisted him in any way in maintaining records of negotiations or preparing responses to bargaining proposals.

### POSITIONS OF THE PARTIES

The County argues that the five disputed positions each has had regular access to information relating to employer-employee relations. Despite efforts of their respective managers to protect them from contact and minimize the amount of information that they may come in contact with, the five individuals, in the regular course of their duties, have such contact and therefore must be made confidential.

MCFSE argues to the contrary that the County was unable to establish that any of the five employees regularly perform confidential duties. Further, it asserts that the County,

through its processing of this request to modify the unit, exhibited bad faith and animosity to MCFSE.<sup>4</sup>

### ISSUE

Are the five disputed positions confidential as defined in EERA?

### DISCUSSION

Government code section 3540.1(c) defines a confidential employee as

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.

The designation of an employee as confidential is not done lightly. Pursuant to Government Code section 3540.1(j), such employees are not considered "public school employees" for purposes of the EERA, and thus lose the rights and protection afforded by the Act.

Nevertheless, PERB and its predecessor, the Educational Employment Relations Board (EERB), have long recognized that a public school employer is

allowed a small nucleus of individuals who would assist the employer in the development of the employer's positions for the purposes of employer-employee relations . . . [who] would be required to keep confidential those matters that if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture. [Sierra Sands Unified School District (1976) EERB Decision No. 2, at p. 2 (Sierra Sands).]

In Fremont Unified School District (1976) EERB Decision No. 6, the Board held that employer-employee relations includes "at the least, employer-employee negotiations and the process of employee grievances." Not all involvement in such areas, however, has been deemed substantial enough to warrant a confidential designation. (See, e.g., Franklin-McKinley School District (1979) PERB Decision No. 108, where a business office supervisor was found not to be confidential despite having costed out negotiations proposals.) Further,

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<sup>4</sup> The motivation for the filing of this unit modification is not relevant to this determination.



while the frequency of an employee's work of a confidential nature is not controlling, to be considered "in the regular course of an employee's duties" the confidential work must be "more than a happenstance" (San Rafael City Schools (1977) EERB Decision No. 32), and involve "more than a fraction" of the employee's time (Regents of the University of California Unit Determination (1983) PERB Decision No. 247b-H).

Administrative Secretary, Regional Occupational Program

Nona Olsen, Samantha Travis's supervisor, indicated that Ms. Travis only has authority to access mail or electronic mail marked confidential if Ms. Olsen approves it. Ms. Olsen indicated that it would make her more efficient and effective if Ms. Travis could regularly access her mail while she travels. In addition, Ms. Olsen testified that Ms. Travis would be of assistance in investigating and helping to respond to grievances and employee complaints if she were appropriately designated as confidential.

Furthermore, Ms. Olsen viewed Ms. Travis as acting in her stead, that is, as the office administrator whenever she was away from the office. In Olsen's absence, Ms. Travis was responsible for making sure there was adequate staff coverage for both of the clerical staff in the office and the program as a whole.

While PERB is cognizant of employers' desires to operate a more efficient and effective educational program, it must also be cautious not to stray from the purpose of the designation of confidential employee as expressed in Sierra Sands. There was no evidence presented to demonstrate that the ability of the County to process grievances and negotiate contracts has been unduly impeded by the inclusion of Ms. Travis in the bargaining unit to this point.

Information concerning Ms. Olsen's rotating in and out at the negotiating table with MCFSE and Ms. Travis's assistance to the County in preparing bargaining proposals was not fully developed. When County administrators rotate in and out of negotiations, it should not be presumed that their support staff should be deemed in or out of the unit while their

supervisor is at the table. To invite the proposition is to ignore San Rafael City Schools, PERB Decision No. 32, that required that duties be more than happenstance in order to designate a position as confidential.

The fact that Ms. Travis was not available to help do research on a given proposal is not sufficient reason to remove her bargaining unit rights. There was no other evidence to demonstrate that Ms. Travis does, in the regular course of her duties, have access to, or possess information relating to her employer's employer-employee relations. This position should remain in the classified unit.

Administrative Secretary, SELPA and Program Secretary, Special Education

For reasons similar to those spelled out above in the discussion of the Administrative Secretary, ROP, the County seeks to have Sharon Mallorich and Sharon Foster designated as confidential. The problems created by having these two individuals designated non-confidential relate to time and efficiency in typing, filing and maintaining communications in the absence of the program directors. Ms. Foster is the only clerical support for the special education program. Ms. Foster's supervisor, Paula Miller, assisted at and attended a PERB settlement conference on an unfair practice complaint involving special education employees of the County. The employer asserts that had Ms. Foster been designated as a confidential employee, it would have assisted the County greatly in the investigation and response to the charge.

Further, the County argues that Ms. Foster's isolation in a building away from other employees necessitates that she access confidential files and act in place of Ms. Miller when Ms. Miller is out of the office. Once again the nature of the employer's business, namely, programs that are run countywide which require managers to travel and, the functioning of the office in the absence of the administrator is an element that must be considered.

In determining whether an employee is confidential, it must be determined if the involvement in employer-employee relations is substantial enough to warrant such a designation. (See Franklin-McKinley School District, *supra*, PERB Decision No. 108.) Neither of these two secretaries' supervisors has participated in the negotiations process. The County contends that this has more to do with the dates of their appointments and the terms of the contracts with MCFSE.

Without some evidence as to what roles the SELPA Administrator and Special Education Programs Director might have in the negotiations process, it is difficult to speculate what each secretary's role might be. The Board has found a position confidential based on duties yet to be performed. (See Calexico Unified School District (1990) PERB Decision No. 800 (Calexico).) However, unlike Calexico, where an assistant personnel clerk shared duties with her supervisor who was designated as confidential, neither of the secretary's supervisors in the instant case is a confidential employee with whom they interchange duties. Neither the SELPA secretary nor Special Education Secretary perform confidential duties. To exclude them based on roles their supervisors may one day hold as members of their employer's bargaining team is too speculative. These positions should remain in the bargaining unit.

Fringe Benefits Technician

Gladys Hunt's position is unique in the nature of the work she performs and the location of her work station. She has access to information that relates directly to the benefit offerings that the County can make at the negotiating table. She is a direct and critical link in the information chain as it relates to the County's benefit program. In addition, she has a role at her work location that requires her to fill in and/or substitute for two confidential employees who work side by side with her in the outer office of the Superintendent and Assistant Superintendent for Business Services. In Imperial Unified School District (1987) PERB

Decision No. 647, an employee was held to be confidential based not only on the work performed but the location of his/her work station.

Based on the evidence presented at the hearing regarding the nature of the work Ms. Hunt performs for the Staywell program and the County that involves negotiating rates of insurance coverage and changes in policy language, and the backup work she performs on a regular basis as a secretary in the Superintendent's outer office, this position is confidential.

Program Secretary, Court, Community and Alternative Education Programs

The evidence relating to this position established that the Administrator of the program, Peter Kostas, goes to great lengths to keep his secretary, Kathleen Tindle, isolated from work that he considers to be of a confidential nature. Undoubtedly this creates awkward and inconvenient work situations. Having Mr. Kostas type minutes of management meetings or respond to grievances may not be the most efficient use of this time. On the other hand, there was no evidence to demonstrate that the employer was unable to complete work of a confidential nature.

The County argues that based on the necessity to help Mr. Kostas be a more effective administrator, Ms. Tindle's position should be made confidential. There was no evidence to demonstrate that Ms. Tindle had performed or was about to perform confidential duties.

In order to increase the "small nucleus" that the Board has relied on since Sierra Sands there must be more specific facts as to the work Ms. Tindle does. The fact that Mr. Kostas would like help with some of the work he has had to perform himself, that he considers confidential, does not justify making Ms. Tindle's classification confidential.

CONCLUSIONS OF LAW

Based on the above described findings it is concluded that the Administrative Secretaries, SELPA and ROP and the Program Secretaries, Special Education and Court, Community and Alternative Education Programs are not confidential. The petition as it relates

to those positions is DISMISSED. The classification of Fringe Benefits Technician shall be designated as confidential and a unit modification order shall issue.<sup>5</sup>

#### Right of Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95814-4174  
FAX: (916) 327-7960

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. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required

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<sup>5</sup> As indicated earlier, the parties stipulated that the Administrative Secretary/Human Resources is confidential.

number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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 Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Roger Smith  
Labor Relations Specialist