

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ELK GROVE UNIFIED SCHOOL DISTRICT,

Employer,

and

ELK GROVE ADMINISTRATIVE SUPPORT
ASSOCIATION,

Petitioner.

Case No. SA-RR-1031-E

PERB Decision No. 1688

September 17, 2004

ELK GROVE UNIFIED SCHOOL DISTRICT,

Employer,

and

AFSCME LOCAL 258,

Exclusive Representative.

Case No. SA-UM-695-E

Appearances: Christine Robinson, President-elect, for Elk Grove Administrative Support Association; Beeson, Tayer & Bodine by Ben M. Ebbink, Attorney, for AFSCME Local 258.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Elk Grove Administrative Support Association (EGASA) of a Board agent's proposed decision (attached).

In November 2001, EGASA had requested recognition of a proposed unit composed of approximately 100 employees in 33 classifications of administrative support staff that had previously been classified as confidential employees. At the same time, AFSCME Local 258 (AFSCME), the exclusive representative of a unit of classified employees, filed a unit

modification petition to add 31 of those 33 classifications to its existing unit.¹ After several days of hearing and review of numerous exhibits, the Board agent issued a proposed decision denying EGASA's petition and granting AFSCME's petition.

The Board has reviewed the entire record, including the petitions from EGASA and AFSCME, the District's response, the parties' briefs, the hearing transcripts and exhibits, the Board agent's proposed decision, EGASA's exceptions and AFSCME's response. The Board finds the Board agent's proposed decision to be free of prejudicial error and adopts it as a decision of the Board itself.

ORDER

For the reasons set forth above, the request by the Elk Grove Administrative Support Association to establish a separate Administrative Support unit is hereby DENIED, and the unit modification petition filed by AFSCME Local 258 is APPROVED. It is therefore ORDERED that the following classifications be added to the classified employee unit represented by AFSCME: Assessment and Evaluation Analyst; Attendance Accounting Specialist; Budget Technician I and II; Budget Technician-Curriculum/Professional Learning; Budget Technician-Food and Nutrition Services; Building Program Accounting Specialist; Computer Repair Shop Lead-BTTI; Computer Training & Support Specialist I, II and III; Continuation School Secretary; Elementary School Secretary; High School Secretary; Middle School Secretary; Network Administrator III²; Personnel Technician I, II and III; Programmer Analyst I, II and III; School Secretary-Special Programs; Senior Computer Training & Support

¹AFSCME's petition did not seek addition of the Community Partnership Coordinator-CalWORKS and Parent Involvement Coordinator classifications.

²The Network Administrator I and II classifications are not placed in the unit by this decision because the positions are vacant. (Mendocino Community College District (1981) PERB Decision No. 144a; Marin Community College District (1978) PERB Decision No. 55.)

Specialist; Senior Network Administrator; Senior Programmer Analyst; Technology Planning Specialist; and Web Specialist.³

Chairman Duncan and Member Neima joined in this Decision.

³See footnote 1.



STATE OF CALIFORNIA
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REPRESENTATION
CASE NO. SA-RR-1031-E

ELK GROVE UNIFIED SCHOOL DISTRICT,

Employer,

and

AFSCME LOCAL 258,

Exclusive Representative.

REPRESENTATION
CASE NO. SA-UM-695-E

PROPOSED DECISION
(9/26/2002)

Appearances: Parham & Rajcic, by Jackson E. Parham, Attorney, for Elk Grove Unified School District; Christine L. Robinson, President-elect, for Elk Grove Administrative Support Association; Beeson, Tayer & Bodine, by Ben M. Ebbink, Attorney, for AFSCME Local 258.

Before Les Chisholm, Regional Director.

PROCEDURAL HISTORY

On November 1, 2001, the Elk Grove Administrative Support Association (EGASA or Association) filed a request for recognition (PERB Case No. SA-RR-1031-E) with the Elk Grove Unified School District (District) and the Public Employment Relations Board (PERB or Board). EGASA's petition seeks representation for approximately 100 employees in 33 classifications that, prior to November 1, 2001, had been designated by the District as confidential. The current titles of these classifications are Assessment and Evaluation Analyst;

Attendance Accounting Specialist; Budget Technician I and II; Budget Technician-Curriculum/Professional Learning; Budget Technician-Food and Nutrition Services; Building Program Accounting Specialist; Community Partnership Coordinator-CalWORKS; Computer Repair Shop Lead-Business Technology Training Institute (BTTI); Computer Training & Support Specialist I, II and III; Continuation School Secretary; Elementary School Secretary; High School Secretary; Middle School Secretary; Network Administrator I, II and III; Parent Involvement Coordinator; Personnel Technician I, II and III; Programmer Analyst I, II and III; School Secretary-Special Programs; Senior Computer Training & Support Specialist; Senior Network Administrator; Senior Programmer Analyst; Technology Planning Specialist; and Web Specialist.¹

Also on November 1, 2001, Local 258 of the American Federation of State, County and Municipal Employees (AFSCME or Local 258) filed a unit modification petition (PERB Case No. SA-UM-695-E) seeking to add 31 of these classifications to its established bargaining unit.²

The District's response to EGASA's request for recognition noted that a competing petition had been filed by AFSCME and stated that the District would maintain its neutrality. However, the District's initial response to AFSCME's petition questioned whether the affected employees wished to be a part of any bargaining unit, suggested that the positions lacked a

¹ The record includes a limited amount of information concerning two other classifications (Loss Control Specialist and Risk Management Technician-Lead). However, neither petitioner amended its petition to include these two classifications and they shall not be discussed herein.

² The AFSCME petition did not include the classifications titled Community Partnership Coordinator-CalWORKS and Parent Involvement Coordinator.

“direct” community of interest with other positions represented by AFSCME, and predicted “difficult internal struggles” if AFSCME’s petition were approved.

Settlement discussions, including a PERB-conducted settlement conference on January 11, 2002, failed to produce a resolution of the unit dispute. A formal hearing was conducted by the undersigned on May 14, 15, 28 and 29, 2002. With the receipt of briefs from EGASA and AFSCME,³ the matter was submitted for decision on July 19, 2002.

FINDINGS OF FACT

Background

The District is a large and growing school district, with over 40 schools and an average daily attendance (ADA) of approximately 50,000. At present, there are five established bargaining units in the District: a pupil personnel unit represented by the Psychologists and Social Workers Association, a certificated unit represented by the Elk Grove Education Association, a transportation unit represented by the Amalgamated Transit Union, an instructional aides unit represented by the California School Employees Association (CSEA), and a classified employees unit represented by AFSCME. The AFSCME-represented unit, numbering approximately 1,100 employees, includes both office/technical and operations support classifications.

The Elk Grove Confidential & Administrators’ Association (EGCAA) is a non-exclusive representative of employees who are not in any bargaining unit recognized or certified pursuant to the Educational Employment Relations Act (EERA).⁴ The employees at

³ The District, by letter dated June 21, 2002, confirmed that it would not file a post-hearing brief in this matter.

⁴ EERA is codified at Government Code section 3540 et seq.

issue here formerly participated in the EGCAA, along with other administrative and confidential employees who remain excluded from EERA coverage. While the EGCAA lacks the right under EERA to meet and negotiate with the District, the District does meet with its representatives over issues including health and other benefits and salary.

In 1982, Local 258 filed a unit modification petition (PERB Case No. SA-UM-144-E) seeking, inter alia, to add what were then titled principals' secretaries to its classified unit. The requested modification was opposed by the District on grounds that the secretaries were properly designated as confidential employees, and the petition was later withdrawn. From time to time, however, AFSCME renewed its contention that the secretaries, as well as other positions, were improperly designated as confidential. This issue was raised again in negotiations in 1999 and 2000. The District agreed that a classification study being conducted by Ewing & Associates would include an examination of whether positions were improperly designated as confidential based on the definition of confidential employee found in EERA.⁵

In the fall of 2001, the Ewing study was received and acted upon by the District. The employees covered by the petitions in this proceeding were notified that, effective November 1, 2001, they would no longer be designated as confidential. The District did not agree to place the affected employees in AFSCME's or any other established bargaining unit. The employees were instead placed on a separate salary schedule designated as "Administrative Support," with an assurance that the employees' salary and benefits would remain the same.

⁵ EERA section 3540.1(c) provides that

"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.

Community of Interest Factors

Lines of Supervision

The District's organization chart shows three associate and four assistant superintendents reporting to the superintendent, and two assistant superintendents reporting by way of one of the associate superintendents. While the employees at issue here fall into many of the District's departments, the largest concentrations report to supervisors who in turn report to the Associate Superintendent for Education Services, Associate Superintendent for Elementary Education, or Associate Superintendent for Secondary Education.

The director of Technology Services, who reports to the Associate Superintendent for Education Services, supervises 36 employees in 13 classifications that are covered by the petitions. Included are the Computer Repair Shop Lead-BTTI, Computer Training and Support Specialist I (4 employees), II (16) and III (2), Senior Computer Training and Support Specialist (2), Network Administrator III (1) and Senior Network Administrator (1), Programmer Analyst I (1), II (2) and III (3), Senior Programmer Analyst (1), Technology Planning Specialist (1) and Web Specialist (1).⁶

Also under the Associate Superintendent for Education Services are two Assessment and Evaluation Analysts within Research and Evaluation, the Budget Technician-Curriculum/Professional Learning and a School Secretary-Special Programs who report to the Assistant Superintendent for Curriculum/Professional Learning, and one Budget Technician I in Prevention and Intervention Services under the Assistant Superintendent for Student Services.

⁶ This department also would include employees classified as Network Administrator I and II, but no such positions were filled at the time of the hearing.

The principals at the 33 elementary schools report to the Associate Superintendent for Elementary Education and each supervises an Elementary School Secretary. The Office of State and Federal Programs is also under the Associate Superintendent for Elementary Education and that office employs one Assessment and Evaluation Analyst and one Budget Technician II.

Likewise, principals at the middle schools, high schools and continuation high schools report to the Associate Superintendent for Secondary Education, and together they supervise a total of 16 employees in the classifications of Middle School Secretary (6 employees), High School Secretary (6) and Continuation School Secretary (4). Adult Education also falls under the Associate Superintendent for Secondary Education, and that unit employs the Community Partnership Coordinator-CalWORKS (1 employee), one Budget Technician I, and two employees in the School Secretary-Special Programs classification. In addition, one School Secretary-Special Programs is employed in the Career & Educational Options office that is under the Associate Superintendent for Secondary Education.

The remaining employees report to or through their respective supervisors to the Assistant Superintendent for Business Services (Attendance Accounting Specialist (1), Budget Technician I (3) and Budget Technician II (2) in Fiscal Services, and Budget Technician-Food and Nutrition Services (1) in Food and Nutrition Services); the Assistant Superintendent for Facilities (Building Program Accounting Specialist (1) in Planning); the Assistant Superintendent for Human Resources (two employees each in the classifications of Personnel Technician I, II and III); and the Chief of Staff (Parent Involvement Coordinator (1)).

While AFSCME-represented employees are also located in various departments and units not referenced above, each of the units in which employees at issue work also includes

employees in classifications in the existing AFSCME unit. For example, Technology Services also employs computer technicians (I, II, III and Senior); Fiscal Services includes the accounting technicians I and II; various clerical classifications, inter alia, are found at the school sites; and both Adult Education and BTTI utilize such classifications as admissions representative and technician and fiscal technician.

In District offices and departments employing both AFSCME-represented employees and employees in disputed classifications, the employees work under common supervision. At school sites, for example, clerical personnel generally, including school secretaries and school office assistants, report to the principal.

Salaries and Benefits

The Administrative Support salary schedule includes seven steps. For 2001-2002, the lowest paid positions sought by EGASA are in a salary range with an annual salary between \$33,506 and \$42,591. The highest paid positions are in a salary range between \$58,935 and \$74,913 per annum. This schedule lists only one range for each classification.

The AFSCME salary schedule differs from that for Administrative Support in part because it includes training class levels. That is, each level includes four ranges, with employees eligible to progress upward through the levels based on units/hours earned after the employee's hire date. The AFSCME schedule also includes only six steps rather than seven.

The low end of the AFSCME salary schedule is also significantly lower than that of the Administrative Support positions at issue here. However, the upper end of the salary schedule is not significantly different. For example, the planner III can reach an annualized salary, based on the 2001-2002 schedule, of \$68,100. The senior computer technician's highest range tops out at \$70,416, and the construction inspector-technician at \$73,860.

Finally, with regard to salary, the longevity bonus available on the two salary schedules differs. Under AFSCME's schedule, the longevity bonus for 2001-2002 is expressed in a flat dollar amount, and ranges from \$459 (after the 7th year) to \$1,860 (after the 25th). On the Administrative Support schedule, the longevity bonus does not commence until after the 13th year, but then ranges from 1 percent to 6 percent of base salary (after the 28th year).

While most benefits are the same for all District employees, represented and unrepresented, two areas of difference prevail between AFSCME's unit and the Administrative Support employees. First, under AFSCME's collective bargaining agreement with the District, employees are initially eligible for vacation at the rate of one day (8 hours) per month, but gradually accrue more vacation time so that, beginning in the 15th year, they earn two days (or 16 hours) per month. Administrative Support employees begin at a higher rate, 15.33 hours per month, but do not increase their accrual over the course of their employment. The second area of difference involves life insurance, where Administrative Support employees receive a term life benefit in the amount of \$150,000 but AFSCME-represented employees are only eligible for \$50,000.

Certain classifications within the Administrative Support category, but not all, have been determined by the District to be exempt from overtime pursuant to state and federal laws. The classifications exempt from overtime are 14 job titles utilized in Technology Services,⁷ plus the Assessment and Evaluation Analyst. The remaining 18 classifications, like those covered by the AFSCME contract, are not exempt.

⁷ Only the Computer Repair Shop Lead-BTTI, among the disputed titles utilized in Technology Services, is not exempt from overtime.

Education and Experience

While the specific wording and requirements of classifications vary by subject expertise, there are three major groupings in which they may be placed. Eight of the classifications at issue require a bachelor's degree plus one to four years of relevant experience. These eight classifications, in progressive order of number of years experience required, are the Assessment and Evaluation Analyst and Programmer Analyst I; Network Administrator III and Programmer Analyst II; Programmer Analyst III; and Senior Network Administrator, Senior Programming Analyst, and Technology Planning Specialist. In the AFSCME unit, only the planner I, II and III classifications require a bachelor's degree (plus two or more years of related experience in the field).

A second group of classifications includes those that require graduation from high school plus college level course work plus experience. There are, again, gradations within the group as to the amount of college-level work required and the number of years of related experience. Included here are the classifications of Budget Technician I and Budget Technician-Curriculum/Professional Learning (two years college plus one year experience); Budget Technician II (two years college plus two years experience); and Budget Technician-Food and Nutrition Services (two years college plus three years). Classifications requiring less in the way of college-level course work but requiring two to five years of relevant experience are the Computer Repair Shop Lead-BTTI, Computer Training and Support Specialist I, II and III, Senior Computer Training and Support Specialist, Building Program Accounting Specialist, High School Secretary, and Web Specialist.

AFSCME-represented classifications that also fall within this latter category of education and experience requirements include the school bookkeeper, state and federal fiscal

technician, accounting technician I and II, construction technician I, II and III, regional team program technician, admissions representative and technician, career center technician, counseling/guidance technician, fiscal technician, construction inspector-technician, theater productions specialist, maintenance alarm technician, and senior computer technician.

The remaining classifications at issue here require graduation from high school plus two or more years of related experience. Many AFSCME-represented classifications also fall within this grouping.

However, other AFSCME-represented classifications fall within groupings that involve less education and/or less experience. While most require at least a high school education, some have only an experience or ability requirement listed.⁸

Job Duties

The Building Program Accounting Specialist performs complex accounting functions related to various funds that support construction, maintenance and retrofitting of school buildings, including reports and record maintenance to show compliance with various state laws. This position is responsible, inter alia, for processing construction progress payments, monitoring contracts, and recording and tracking Office of Public School Construction fund releases by project. The person in this position works with state agencies and outside auditors, as well as with District personnel in accounting, budget, finance and purchasing. The current incumbent in this position has previously been classified as an account clerk, accounting technician and fiscal technician, and was reclassified to her current title with AFSCME's assistance.

⁸ Certain AFSCME positions require high school graduation, plus completion of an appropriate apprenticeship program, plus experience in the trade; this particular combination is not found in the classifications that EGASA seeks to represent.

The Assessment and Evaluation Analyst performs duties related to assessment and testing programs within the District. The functions include designing and conducting survey processes, providing technical assistance and training to other District personnel, and coordinating projects through the Technology Services department. This position is also responsible for data collection, the analysis and reporting of data, assisting with the interpretation and presentation of findings, and helps evaluate testing programs.

The Attendance Accounting Specialist, who reports to the Manager-Accounting in Fiscal Services, performs complex accounting functions for various funds, performs calculations and analyses necessary to create the District's ADA reports, audits attendance reports from school sites, compiles reports on attendance, enrollment and class size, and reconciles District records with county reports. The specialist also provides training to site personnel concerning attendance and enrollment, and serves as a resource to assist school site personnel in reporting ADA. The incumbent in this position was previously classified as an accounting technician. The school site personnel involved in attendance reporting are in the AFSCME unit.

While specific duties of the various budget technician classifications vary, these personnel are responsible generally for calculations and analyses required for the preparation of program and District budgets and for forecasting revenues and expenditures, to develop new school startup schedules or funding models, to work with personnel in accounting and technology services to reconcile anomalies, and to work with human resources, technology services and accounting to improve financial accounting and position control systems. Employees in these positions may work with program managers to help prevent over-expenditures, review purchases and travel requisitions to determine availability of funds, assist

in salary review, and prepare reports for the Board of Education. These employees have frequent work related contact with school secretaries. Many incumbent budget technicians previously held District positions in the AFSCME unit, including in accounting and at school sites as a school bookkeeper.

The Community Partnership Coordinator-CalWORKS position works with other adult education staff to implement CalWORKS programs. The focus is on helping individuals in the community find and/or become competitive for employment. Activities in pursuit of this mission involve contact with local and regional businesses, local governmental agencies, community members, and school site personnel.

The Parent Involvement Coordinator serves as a program liaison between families and the schools, and participates in the planning, organization and implementation of parent involvement efforts in the District. The work involves frequent contact with school administrators, parents and teachers. The position also has responsibilities in the area of monitoring budgets and expenditures.

The Personnel Technician I deals primarily with attendance reporting and record keeping. These employees work closely with employees in the Payroll Department, they are required to be familiar with District policies and provisions of the collective bargaining agreements, and they are called upon to assist administrators and supervisors in interpreting such information. The Personnel Technician II is more involved in the processing of job applications, both for certificated and classified positions. When a posting is requested, the II is responsible for verifying that a budgeted position is available, and then to screen applications as they come through. The Personnel Technician III performs a variety of related duties involving higher levels of responsibility, including in the areas of monitoring the

vacancy status report and overseeing the posting process. The III evaluates transcripts and records of classified staff, certificated staff and applicants vis-à-vis eligibility for licenses, credentials and permits. The level III position also prepares job announcements, paper screening instruments, and employment tests. Personnel technicians may be asked to assist personnel analysts or administrators with respect to pending grievances or preparation of information for negotiations. Also employed in the Human Resources department are personnel assistants, represented by AFSCME.

The Computer Repair Shop Lead-BTTI is responsible for the repair of computers and other computer-related hardware, such as printers, including warranty repairs for certain brands. This position also supervises work by students performing repair work. The incumbent operates a mobile repair service (the repair van) and oversees the repair shop. The incumbent is responsible for maintaining an inventory of spare parts and ordering supplies as needed, and also deals with the disposal or salvage of surplus and outdated equipment. The employee in this position has work related contact with all employees in the District who work with computers, and frequently consults with other employees in the Technology Services department, including the senior computer technician.

The computer training and support specialist positions (I, II, III and Senior) as a group provide technical support and training for District personnel. As might be expected, the higher level positions within the series have increased responsibilities, and the senior positions serve in a lead capacity over groups focussed, respectively, on network servers and personal computer (PC) support. The range of duties performed includes providing troubleshooting support through a “hotline” service, repairs of computers, printers and other peripherals, performing minor server maintenance, setting up new computer labs, doing computer

installations, and installing new software. These positions support computer workstations in classrooms, in administrative offices and in student computer labs. Some employees work out of regional sites located at schools while others are based in the Trigg Annex with other Technology Services employees but may travel to sites. These employees potentially interact with any District employee regarding a computer problem.

The Network Administrator III and Senior Network Administrator are responsible for the design, maintenance and implementation of network systems, both local and wide area, for the District. They work with the required equipment, including hubs, switches, routers and so forth, that allow the computers to “talk” to one another. These positions also assist with higher level or more difficult problems that the computer training and support specialists need help with, and the senior level position also deals with network security issues and the preparation of budgets. Their job duties involve frequent contact with site technology technicians, telecommunications specialists, and construction managers, as well as with technology classifications that are at issue in this proceeding.

All employees in the programmer analyst series (I, II, III and Senior) do program design and coding of computer based systems that are needed for various divisions of the District. The independence and technical expertise of the positions increases from level to level. These employees also assist with hotline support calls, especially in the area of debugging software-based problems. Work related contact occurs with a wide spectrum of other offices and employees of the District, as the Technology Services department generally and the programmer analysts specifically deal with the District’s instructional computer labs, financial systems, student information system, telecommunications and telephones, and personnel and payroll systems.

The Technology Planning Specialist is the primary interface between the Technology Services department and Facilities and Planning with respect to technical specifications required for such issues as network cabling and phone switches in new and modernized facilities. The person in this position works with architects, construction managers, network administrators and telecommunications specialists, among others, to ensure that architectural plans are accurate with regard to the District's needs.

The Web Specialist creates and maintains both the District's Internet web site and its Intranet (internal) web site. This employee manages the Web servers, creates and maintains information on the web sites, "Web-enables" access to information, and works with school sites to publish Web data.

The High School Secretary has a separate office located outside the principal's office, and functions as an office manager who delegates work to and oversees work assigned to other office employees. The secretary maintains confidential subject files, including student discipline and personnel. The secretary opens mail directed to the principal, attends meetings and takes notes, and prepares staff absence reports. The secretary often composes letters to respond to correspondence for the principal, and gathers information for the principal. The secretary, along with other office employees, frequently interacts with parents and students, as well as other school site personnel, both teaching and classified. The numbers of office employees vary from site to site, but one secretary testified that her site also employs six school office assistants I, an attendance technician, a data processing assistant, a school bookkeeper, and a registrar.

The Middle School Secretary, except for the lack of a separate office, is very similarly situated to the High School Secretary with respect to working environment, duties, interaction

with other employees, students and parents, and the complement of other office employees utilized at the site. Like the High School Secretary and other school secretaries, the Middle School Secretary often has work related contact with budget technicians and employees in Human Resources.

The Continuation School Secretary works in a non-traditional environment when compared with other school secretaries and clericals, dealing with higher-risk students. The job duties of the position are, however, similar to those of other school secretaries. The Continuation School Secretary maintains site personnel records, prepares personnel action forms, is involved in the submission of paperwork to post positions and to screen applicants, maintains student discipline files, and maintains school calendars. The secretary opens mail, frequently prepares responses for the principal, orders supplies, and acts as the school bookkeeper for the site. Also employed at the site are employees in data processing assistant and registrar classifications.

The Elementary School Secretary's work environment differs in fundamental respects from that of the Continuation School Secretary, but the job duties described at the hearing and in the written job description are very similar. In fact, all school secretaries function in the role of office managers for their respective school sites and assist the principal in many ways. At the elementary schools, the school secretary again fills the role of school bookkeeper but is assisted in other clerical tasks by employees in the school office assistant I or II classification.

The School Secretary-Special Programs classification is used in various offices, including adult education and BTTI. Like other school secretaries, these employees provide support to the administrator, often delegate work to and oversee the work of such other clerical

classifications as school office assistant I and registrar, answer phones, interact with teachers, students and parents, and handle correspondence and filing.

Hours and Working Conditions

The classifications at issue here are situated at various District locations. A number of classifications, including personnel positions, budget technicians, the Building Program Accounting Specialist, and some programmer analysts, are found at the District headquarters building (the Trigg Building). As noted earlier, most technology classifications are housed in the Trigg Annex or at a school site, while the Computer Repair Shop Lead-BTTI is located at a separate facility housing the Business Technology Training Institute. School secretaries, as might be expected, are found at school sites. One common characteristic of all these sites is that AFSCME-represented positions are also found there, frequently working in the same offices as or side-by-side with Administrative Support classifications. Considerable evidence of social interaction, structured and otherwise, among all employees at a site was introduced during the hearing.

The employees at issue generally work set schedules with hours that fall between 7:00 a.m. and 5:00 p.m. (e.g., 7:00 a.m. to 4:00 p.m., or 7:30 a.m. to 4:30 p.m., etc.). Employees in AFSCME-represented positions tend to work hours that are similar to or overlapping those of the petitioned-for employees in the same office. Most employee witnesses also testified that they adjust their working hours and work past their normal ending time as needed to get the job done. Examples of this practice were offered by both employees at issue and employees in AFSCME's unit.

All contested classifications work in an office setting, except the Computer Repair Shop Lead-BTTI who works, as the title suggests, in a computer repair shop environment.

While most of the employees at issue work only in one location, many of the employees in Technology Services travel to school sites from their base location.

Employees of the District who work in an office environment, whether they are managers, AFSCME-represented, or in the Administrative Support grouping, commonly use computers, copier machines, fax machines and telephones.

Extent of Organization/Representation History

As required by EERA, EGASA demonstrated proof of at least majority support in its requested unit with its petition. In addition, and not surprisingly, each of the witnesses in the proposed unit called to testify by EGASA indicated their preference for representation by EGASA over being included in AFSCME's unit.

AFSCME did not submit, nor under PERB's regulations and precedent was AFSCME required to submit, any proof of employee support for its petition. AFSCME did offer several examples of situations where the union provided assistance to employees whose reclassification placed them in the Administrative Support grouping, as well as examples of assistance provided to employees already in an Administrative Support position.

Further, as referenced above, there are numerous examples of employees now in a disputed classification who earlier were employed in an AFSCME-represented position. One estimate, for school secretaries, is that nearly 30 percent of such employees formerly worked in a position classified in AFSCME's unit. Similar examples were offered for personnel technicians and budget technicians, among others.

ISSUE

Do the Administrative Support positions petitioned for by EGASA share a community of interest that is separate and distinct from AFSCME-represented positions and thus warrant

the establishment of a separate unit? If not, should the positions petitioned for by AFSCME be added to its established unit?

POSITIONS OF THE PARTIES

EGASA

EGASA relies on language in EERA to assert the right of these employees to exercise their free choice in determining which employee organization, if any, should represent them. EGASA notes that AFSCME neither sought nor produced evidence that employees desire to be represented by AFSCME and that AFSCME declined opportunities to appear before the group to seek such support.

EGASA also contends that the positions they seek to represent share a greater community of interest with themselves than with positions in AFSCME's current unit. The factors cited by EGASA include differing vacation accrual, life insurance and longevity; a different salary schedule; longer probationary period; inclusion of some positions not eligible for overtime; higher levels of training and education requirements; and higher levels of job responsibility and accountability. EGASA characterizes the employees in its proposed unit as the "go to people" in their respective departments or offices, who often oversee the work of others and in some cases have input on evaluations of job performance.⁹ EGASA also asserts that these positions work more independently and with less direction than AFSCME-represented positions.

⁹ The primary example being the respective roles of the school secretary and school office assistant classifications.

EGASA further contends that their inclusion in AFSCME's unit would present a potential conflict of interest as many of their positions provide direct support to the administration; e.g., in developing the budget of the school district and in personnel functions.

Finally, EGASA cites the lower, flat amount of dues these employees have paid in the past to the EGCAA, as contrasted with the higher level of dues and fees imposed on AFSCME represented employees.

AFSCME

AFSCME first argues that the classifications at issue share a strong community of interest with classifications it now represents. This argument is based on similar job duties and functions, regular interaction both socially and in job performance, often working side-by-side, sharing similar lines of supervision, being hired in an identical fashion, having similar training, education and skills requirements, and having, in most respects, the same employment benefits.

AFSCME discounts the significance of differences between the two groups of employees in such areas as vacation accrual, life insurance and the salary schedules because these differences were established while the Administrative Support positions were mistakenly classified as confidential and the employees' benefits were not established through collective bargaining. AFSCME cites Santa Clara County Office of Education (1990) PERB Decision No. 839 as support for its view that such employer-determined differences are not as persuasive as other community of interest factors.

With regard to certain positions being exempt from overtime, AFSCME argues that this factor is not, alone, sufficient to warrant establishment of a separate unit. AFSCME also notes

that, if it were sufficient, this factor would require PERB to order a unit limited to such positions rather than the unit advocated by EGASA.¹⁰

In sum, AFSCME contends the record evidence supports approval of its petition for unit modification.

District

The District did not, as noted above, file a post-hearing brief, but stated its position on the record at the first day of the hearing. The District identified its interests as being supportive of both AFSCME and EGASA, while recognizing that the two organizations might have conflicting interests. The District stated as a minor interest the avoidance of a proliferation of bargaining units, but also indicated that EGASA's proposed unit exceeds at least one other existing unit in size and characterized the proposed unit as "not so small that it would be a major imposition." The District also indicated it could live with whatever determination PERB might make in this matter.

DISCUSSION

The parties stipulated, and the record evidence supports finding, that the District is a public school employer within the meaning of EERA, and that both AFSCME and EGASA are employee organizations within the meaning of EERA.

¹⁰ AFSCME makes similar points with respect to those classifications, such as personnel technicians and budget technicians, where EGASA argued that they would have a conflict of interest being in the AFSCME unit due to their involvement in labor relations or budget formation issues. AFSCME notes that such contentions, if supported by the evidence, would require the positions to be excluded from any unit, as opposed to being placed in a unit with other petitioned-for employees.

Employee Status

The parties likewise stipulated that the employees at issue are neither confidential employees within the meaning of EERA,¹¹ nor supervisory employees.¹² Again, the record supports these stipulations. For these reasons, the employees at issue are found to fall within the definition of "public school employee" contained in EERA section 3540.1(j).

Unit Determination Criteria

In each unit determination case, the Board is bound to follow the criteria set forth in EERA at section 3545(a):

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 and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

In Sweetwater Union High School District (1976) EERB¹³ Decision No. 4 (Sweetwater), the Board referenced EERA's legislative intent¹⁴ in holding that:

¹¹ See EERA section 3540.1(c).

¹² EERA section 3540.1(m) defines "supervisory employee" as

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.

¹³ Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

¹⁴ The relevant portion of section 3540 quoted by the Board reads as follows:

. . . Implicit in this statement of legislative intention is the notion that the employees will have the ability to choose an organization which is an effective representative. An effective representative will generally be one largely determined by the community of interest and established practices of the employees rather than the efficient operation of the school district.

However, in the same decision, the Board also noted that

It is a legitimate concern that excessive fragmentation of negotiating units may burden an employer with multiple negotiating processes and postures and with a variety of negotiated agreements difficult to administer because their provisions differ.

The Board ruled early in its history that it must in each case determine the "appropriateness" of a unit without being limited only to a choice between "an" or the "most" appropriate unit, and must in each case weigh and balance the statutory criteria in order to achieve consistency of application and the general objectives of EERA. (Antioch Unified School District (1977) EERB Decision No. 37 (Antioch).

In Sweetwater, the Board announced its preference for three units of classified employees: instructional aides; office-technical and business services; and operations and support services. The significance of the Sweetwater "preferred" units was further explained in Compton Unified School District (1979) PERB Decision No. 109 (Compton) where the Board held that

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, . . .

a variant unit will not be awarded unless it is more appropriate than the Sweetwater unit based on a separate and distinct community of interest among employees in the variant unit or other section 3545(a) criteria. [Emphasis added; fn. omitted.]

The Sweetwater units were held in Antioch to

reflect a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units.

In this case, since neither the existing AFSCME unit nor the unit proposed by EGASA is a Sweetwater unit, the standard against which the requested units are judged shifts to whether the proposed unit is an appropriate unit. (Long Beach Community College District (1999) PERB Decision No. 1315.) In Los Angeles Unified School District (1998) PERB Decision No. 1267, the Board's discussion includes reference to evidence of legislative intent, in the enactment of EERA, that the Board should "find the largest reasonable unit to be the appropriate one for purposes of collective bargaining." (Quoting the California Assembly Advisory Council, Final Report, p. 85 (March 15, 1973); also known as the "Aaron Report.")

While not required to demonstrate its proposed unit is more appropriate than a Sweetwater unit, it is still necessary for any party favoring establishment of a unit to show that it has a community of interest separate and distinct from other employees. In Sacramento City Unified School District (1977) EERB Decision No. 30, the Board held that:

A separate unit is not warranted merely because a group of employees share a community of interest among themselves, when that homogeneous group forms only a part of a larger essentially homogeneous group sharing similar conditions of employment and job functions.

In Compton, the Board rejected a separate unit for skilled crafts employees, and included them with the operations and support services unit, despite a petitioner's demonstration of 84 percent membership among the skilled crafts employees.

In later denying a unit of hourly bus drivers, where other bus drivers were already included in the operations and support services unit, the Board noted that:

Every classification possesses a community of interest among its members. Janitors, undisputedly, have more in common with other janitors than they do with gardeners, but we have yet to find a separate unit of only janitors appropriate, absent unusual circumstances. [San Diego Unified School District (1981) PERB Decision No. 170.]

In Lodi Unified School District (2001) PERB Decision No. 1429, the proposed severance of a unit of information technology professionals, from a wall-to-wall classified unit, was rejected by the Board on grounds that the unit proposed did not possess a separate and distinct community of interest.

Analysis

The classifications in EGASA's proposed unit do share certain characteristics. The primary one is their history, in that they had previously been designated as confidential and thus participated in the EGCAA rather than any exclusive representative organization. As a consequence of their prior (excluded) status, they also acquired vacation and life insurance benefits that differ from those of AFSCME-represented employees, and were placed on a salary schedule that differs in important respects from AFSCME's. However, as noted by AFSCME, differences in areas such as wages and fringe benefits that are subject to the duty to bargain are not controlling. (Santa Clara County Office of Education, supra, PERB Decision No. 839.)

Further, these classifications still share common interests with AFSCME-represented employees in such compensation and benefits areas as health insurance, retirement, sick leave, holidays and lottery bonuses. The two groups of classifications also have many similarities with respect to education and experience requirements, requirements of specialized knowledge or training, working conditions, overlapping and interdependence of job function, supervision, and hours of work.

In addition, many distinctions may be drawn within the group. Regarding educational requirements, only eight of the classifications require a bachelor's degree, and not all require college level course work. While the proportion of the Administrative Support group that has such requirements exceeds that of the AFSCME unit as a whole, this distinction is not enough to overcome shared characteristics with the larger group. Likewise, only certain classifications within the proposed Administrative Support unit have been deemed exempt from overtime.

In the areas of specialized skills and duties, the Administrative Support classifications often differ from one another more than from classifications in the AFSCME unit. For example, the classifications in Technology Services appear to have more in common with AFSCME classifications such as telecommunications specialists, senior computer technicians, and even site technology technicians than they do with school secretaries or budget technicians. Similarly, the school secretaries work with, and often perform the same duties as, school clerical positions represented by AFSCME, far more than with the Building Program Accounting Specialist or the Assessment and Evaluation Analyst.

None of the above is intended to call into question the assertion that the Administrative Support employees tend to be "go to people" in their respective units. It is clear as well that these classifications tend to be ones that employees in AFSCME-represented classifications

might aspire to promote into. In fact, there is considerable evidence that many incumbents in the disputed classifications obtained their positions after working in one or more AFSCME-represented classifications. Examples of such upward movement were offered involving personnel technicians, budget technicians, school secretaries, and computer support and training specialists, among others. This factor further supports finding a shared community of interest between the two groups, rather than the reverse.

AFSCME correctly argues that, if the record supported finding a classification such as High School Secretary to possess the characteristics of a statutory supervisory or confidential employee, such a finding would defeat EGASA's claim that the classification belongs in the same unit as other classifications its petition seeks. Though the record does not support finding any petitioned-for employee to be a supervisor or confidential employee, the legal effect negates any claim that the "office manager" role supports the unit proposed by EGASA.

Free Choice

The final factor to consider is EGASA's contention that the employees affected should, as provided by EERA sections 3540 and 3543, have a right to choose the employee organization that will represent them. Supporting this point of view is the District's expressed belief that internal struggles would result from inclusion of these employees in the AFSCME unit.

This argument is not persuasive because the issue before the undersigned is not which employee organization employees want to represent them but rather what is the appropriate bargaining unit. In this regard, the Board has long rejected the concept of self-determination with respect to determining appropriate units under EERA. (Redondo Beach City School District (1980) PERB Decision No. 114.) In Los Angeles Unified School District, supra,

PERB Decision No. 1267, the Board expressly rejected a “free choice” argument by the petitioner as unsupported by PERB precedent and “contrary to the legislative intent of EERA.”

While employees retain their opportunity, in accordance with timeliness and other requirements of the statute, to seek to change or remove an exclusive representative, the statute does not guarantee to employees that they may vote on the question of unit appropriateness.

CONCLUSION

In sum, I conclude that the petitioned-for classifications do not share a separate and distinct community of interest that would warrant the establishment of a separate unit. (Lodi Unified School District, *supra*, PERB Decision No. 1429.) This conclusion is based on findings that these classifications share a community of interest with AFSCME-represented classifications involving common lines of supervision, overlapping job duties, functional interchange, common benefits, hiring and career development, hours and working conditions.

PROPOSED ORDER

For the reasons set forth above, and based on the entire record of this proceeding, the request by the Elk Grove Administrative Support Association to establish a separate Administrative Support unit is hereby DENIED, and the unit modification petition filed by AFSCME Local 258 is APPROVED. A unit modification ORDER shall be issued upon issuance of a final decision in this matter confirming the addition of the following classifications to the classified employee unit represented by AFSCME: Assessment and Evaluation Analyst; Attendance Accounting Specialist; Budget Technician I and II; Budget Technician-Curriculum/Professional Learning; Budget Technician–Food and Nutrition Services; Building Program Accounting Specialist; Computer Repair Shop Lead-BTTI; Computer Training & Support Specialist I, II and III; Continuation School Secretary;

Elementary School Secretary; High School Secretary; Middle School Secretary; Network Administrator III¹⁵; Personnel Technician I, II and III; Programmer Analyst I, II and III; School Secretary-Special Programs; Senior Computer Training & Support Specialist; Senior Network Administrator; Senior Programmer Analyst; Technology Planning Specialist; and Web Specialist.¹⁶

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

¹⁵ The Network Administrator I and II classifications are not placed in the unit by this decision because the positions are vacant. (Mendocino Community College District (1981) PERB Decision No. 144a; Marin Community College District (1978) PERB Decision No. 55.)

¹⁶ As noted earlier, AFSCME's petition did not seek addition of the Community Partnership Coordinator-CalWORKS and Parent Involvement Coordinator classifications.

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 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).)

Les Chisholm
Regional Director