

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SANTA BARBARA COMMUNITY COLLEGE  
DISTRICT,

Employer,

and

TEAMSTERS LOCAL UNION NO. 186,

Petitioner.

Case No. LA-RR-1175-E

PERB Decision No. 2212

October 26, 2011

Appearances: Liebert, Cassidy & Whitmore by Mary L. Dowell and Lauren C. Liebes, Attorneys, for Santa Barbara Community College District; Dennis A. Shaw, Contract Administrator, for Teamsters Local Union No. 186.

Before McKeag, Dowdin Calvillo and Huguenin, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Santa Barbara Community College District (District) of a proposed decision (attached) by a Board agent. The Board agent considered a petition filed by Teamsters Local Union No. 186 (Teamsters) seeking recognition as an exclusive representative of a proposed unit of the District's certificated deans and certificated directors. The Teamsters filed the petition pursuant to section 3544 of the Educational Employment Relations Act (EERA)<sup>1</sup> and PERB Regulation 33050.<sup>2</sup>

The Board agent found that the proposed unit of certificated supervisors consisting of certificated deans and certificated directors was an appropriate bargaining unit. The Board agent did not agree that all the petitioned-for positions should be included in the proposed

<sup>1</sup> EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

<sup>2</sup> PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

bargaining unit. Specifically, the Board agent found the following disputed positions should be included in the bargaining unit: (1) Associate Dean of Career Technical Education; (2) Associate Dean of Physical Education/Health Education/Dance and Athletic Director; (3) Senior Director of International Students and Services/Study Abroad; (4) Director of Kinko's Early Learning Center; (5) Dean of Instruction; and (6) Director of Continuing Education. On the other hand, the Board agent concluded the following disputed positions should be excluded from the bargaining unit: (1) Deans of Education Programs; (2) Director of Extended Opportunities, Programs, and Services and Cooperative Agencies Resources for Education.

The Board has reviewed the proposed decision and the entire record in this case and generally finds the proposed decision well-reasoned, adequately supported by the record and in accordance with applicable law. We disagree, however, with the findings that the Dean of Instruction and Senior Director of International Studies should be included in the petitioned-for unit. Accordingly, we adopt the proposed decision as the decision of the Board itself, subject to the following discussion regarding the unit placement of these two positions.

## DISCUSSION

### **A. Dean of Instruction**

We find there is sufficient evidence in the record to support the conclusion that the Dean of Instruction is properly designated as management. According to the Board agent, this position oversees various programs in the continuing education division and requires the incumbent to develop budgets, supervise staff and make decisions regarding hiring and scheduling. While the incumbent does, in fact perform those duties, the Dean of Instruction also independently plans, organizes, controls and directs the operations of the assigned programs/services in the continuing education department. Based on our review, we find this

position plays a significant role in both formulating District policies for the continuing education program and administering District programs. Indeed, the essential duties of this position include the responsibility to develop and enforce policies and procedures for faculty, students and the community.

In addition, we find this position is substantially similar to the positions of the Deans of Educational Programs. Consequently, since we believe the proposed decision properly designated the Deans of Educational Programs as management positions, we believe the Dean of Instruction should also be designated as a management position.

In making his decision, the Board agent relied on *Grossmont-Cuyamaca Community College District* (2008) PERB Decision No. 1958 (*Grossmont*). In *Grossmont*, the Board held that academic deans at the Grossmont-Cuyamaca Community College District lacked significant responsibilities for formulating district policies and were not properly designated as management. Based on our review, we believe the Dean of Instruction plays a significantly larger role in formulating policies for the continuing education program than did the academic deans in the *Grossmont* case. Therefore, we find the Board's conclusion regarding the academic deans in *Grossmont* is not dispositive to this case.

Based on the foregoing, we hereby reverse the portion of the proposed decision regarding the Dean of Instruction position and find this position is properly excluded from the petitioned-for unit.

**B. Senior Director of International Students and Services/Study Abroad Programs**

In addition to the Dean of Instruction, we find there is sufficient evidence in the record to support the conclusion that the Senior Director of International Students and Services/Study Abroad Programs (Senior Director) is properly designated as management. The Senior Director oversees two separate programs: the study abroad programs and the international

student program. According to the Board agent, the Senior Director did not play a significant role in the formulation of District policy because she did not develop policy proposals for the international students and because she did not present proposals to the District Board of Trustees. This analysis, however, focused solely on the Senior Director's duties with regard to the international student program and did not consider her duties in connection with the study abroad program.

With regard to the study abroad program, the Senior Director operates with a high degree of independence. Among other things, the Senior Director formulates initiatives and problem solves issues relating to the program. She is responsible for initiating and developing contracts to support the program and makes recommendations regarding the tuition rates for the students who participate in the study abroad programs. In addition, she travels internationally on behalf of the District, inspects new facilities to ensure they meet the needs of the students participating in the programs and serves as the face of the District to the international community. Based on these factors, we find this position plays a significant role in both formulating District policies and administering District programs and, therefore, is properly designated as a management position.

Based on the foregoing, we hereby reverse the portion of the proposed decision regarding the Senior Director position and find this position is properly excluded from the petitioned-for unit.

ORDER

It is hereby ORDERED that a unit including certain certificated deans and directors employed by the Santa Barbara Community College District (District) is an appropriate unit for purposes of meeting and negotiating under the Educational Employment Relations Act.

The Public Employment Relations Board (PERB or Board) finds the following positions are appropriate for inclusion in the petitioned-for bargaining unit: (1) Associate Dean of Career Technical Education; (2) Associate Dean of Physical Education/Health Education/Dance and Athletic Director; (3) Director of Kinko's Early Learning Center; and (4) Director of Continuing Education.

The Board further finds the following positions are properly excluded from the petitioned-for bargaining unit: (1) Deans of Education Programs; (2) Director of Extended Opportunities, Programs, and Services and Cooperative Agencies Resources for Education; (3) Dean of Instruction; and (4) Senior Director of International Students and Services/Study Abroad.

Pursuant to PERB Regulation 33450, within 10 days following issuance of a final decision in this matter, the District shall be required to post a copy of the Notice to Employees attached hereto as an Appendix on all employee bulletin boards. The Notice to Employees shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

The Board hereby ORDERS that Case No. LA-RR-1175-E be REMANDED to the Office of the General Counsel for proceedings consistent with this decision.

Members Dowdin Calvillo and Huguenin joined in this Decision.





APPENDIX

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California**

CASE: *Santa Barbara Community College District and Teamsters  
Local Union No. 186  
Case No. LA-RR-1175-E  
PERB Decision No. 2212*

EMPLOYER: Santa Barbara Community College District  
721 Cliff Drive  
Santa Barbara, CA 93109

EMPLOYEE ORGANIZATION  
PARTY TO PROCEEDING:

Teamsters Local Union No. 186  
1534 Eastman Avenue, Suite B  
Ventura, CA 93003

FINDINGS:

The Board finds the following unit is appropriate for meeting and negotiating:

Unit Title: Certificated Supervisors

Shall Include: Associate Dean of Career Technical Education; Associate Dean of Physical Education/Health Education/Dance and Athletic Director; Director of Kinko's Early Learning Center; and Director of Continuing Education

Shall Exclude: Deans of Educational Programs; Director of Extended Opportunities, Programs, and Services and Cooperative Agencies Resources for Education; Dean of Instruction; Senior Director of International Students and Services/Study Abroad; and all other employees, including management and confidential employees.





Pursuant to PERB Regulation 33450, within 10 days following issuance of a final decision in this matter, the District shall be required to post a copy of the Notice to Employees attached hereto as an Appendix on all employee bulletin boards. The Notice to Employees shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

Dated: \_\_\_\_\_

SANTA BARBARA COMMUNITY COLLEGE  
DISTRICT

By \_\_\_\_\_  
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR A MINIMUM OF FIFTEEN (15) WORKDAYS. REASONABLE STEPS SHALL BE TAKEN TO ENSURE THAT THIS NOTICE IS NOT REDUCED IN SIZE, ALTERED, DEFACED OR COVERED WITH ANY OTHER MATERIAL.



STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA BARBARA COMMUNITY COLLEGE  
DISTRICT,

Employer,

TEAMSTERS LOCAL UNION NO. 186,

Petitioner.

REPRESENTATION  
CASE NO. LA-RR-1175-E

PROPOSED DECISION  
(6/29/2010)

Appearances: Liebert Cassidy Whitmore, by Mary L. Dowell and Lauren C. Liebes, on behalf of Santa Barbara Community College District; Dennis Shaw, on behalf of Teamsters Union Local No. 186.

Before Eric J. Cu, Hearing Officer.

PROCEDURAL HISTORY

On May 13, 2009, the Teamsters Local Union No. 186 (Teamsters) filed a petition seeking recognition as the exclusive representative of a proposed unit of Certificated Deans at the Santa Barbara Community College District (District) pursuant to Educational Employment Relations Act (EERA) section 3544 and PERB Regulation 33050.<sup>1</sup> On May 19, 2009, the Teamsters amended its petition to include both Certificated Deans and Certificated Directors in the proposed unit. On May 27, 2009, the District posted notice of the Teamsters' petition pursuant to PERB Regulation 33060. On June 2, 2009, the District filed a letter with PERB, where it stated that it disputes the appropriateness of the Teamsters' proposed unit. The District further stated that all of the classifications in the proposed unit fall under the definition of "management employees" as defined by EERA section 3540.1(g).

<sup>1</sup> EERA is codified at Government Code section 3540 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

On June 26, 2009, PERB made the administrative determination that the proof of support submitted by the Teamsters was sufficient to meet the requirements of PERB Regulation 33050(b). The District again took the position that the bargaining unit proposed in the petition was inappropriate. On August 3, 2009, PERB held an informal settlement conference to discuss the issues raised by the petition.

The parties' disputes were not resolved at the informal settlement conference and a formal hearing was scheduled for October 28-30, 2009. The hearing was held on the agreed-upon dates and, on January 11, 2010, the parties submitted simultaneous closing briefs. At that point the record was closed and the case was submitted for decision.

After the close of the official record, on January 25, 2010, the District filed a Notice and Motion to Strike Teamsters' Closing Brief.

#### RULING ON MOTION TO STRIKE

The District requests that PERB strike the Teamsters' closing brief from the record because the Teamsters did not concurrently serve the District when filing the brief with PERB as required by PERB Regulations 32212 and 32140(c). Teamsters filed its brief with PERB on January 11, 2010. On January 21, 2010, PERB received a proof of service demonstrating service of Teamsters' closing brief on the District's counsel.

PERB has the discretion to excuse a late filing for "good cause." (PERB Regulation 32140.) PERB "has found good cause to exist for 'honest mistakes' such as mailing or clerical errors." (*Trustees of the California State University (San Diego)* (2006) PERB Order No. Ad-355-H, citing *Barstow Unified School District* (1996) PERB Order No. Ad-277.) In addition, good cause can only be found where there was "a conscientious effort to timely file and the delay did not cause prejudice to any party." (*Trustees of the California State University (San*

*Diego*), *supra*, PERB Order No. Ad-355-H, citing *United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.)

In *City of Long Beach* (2008) PERB Decision No. 1977-M, the Board considered a respondent's request to dismiss an appeal of an unfair practice charge case because the charging party failed to concurrently serve the respondent as required by PERB Regulation 32140. The Board found that "[w]hen considering the charging party's noncompliance with the Board's service requirements, we should read and apply PERB Regulations in light of their intended purpose, that is, to protect a respondent from stale claims or to prevent prejudice because a respondent was unable to defend itself due to the late service." (*Id.*, citing *San Diego Community College District* (1988) PERB Decision No. 662.) In *City of Long Beach*, *supra*, PERB Decision 1977-M, the Board excused the charging party's late filing in light of the fact that the respondent received an extension of time to file a response to the appeal and there was no other showing of prejudice.

In the present case, the parties were directed to file simultaneous closing briefs on or before January 11, 2010, and that, with the exception of such briefs, the record was closed. PERB received both parties' closing briefs in a timely fashion. Service of the Teamsters' closing brief apparently took place on or around January 19, 2010. In a telephone conversation with the Teamsters' representative on or about January 19, 2010, the representative stated that Teamsters was previously unaware of its obligation to serve a copy of the closing brief on the District.

Based on these facts, I deny the District's Motion to Strike the Teamsters' closing brief. By filing the brief with PERB in a timely manner, Teamsters demonstrated a conscientious effort to comply with PERB's filing regulations. Moreover, the District has not alleged any prejudice as a result of not being served with the closing brief until January 19, 2010.

Considering that neither party was given the opportunity to file additional briefs in this case, it is doubtful such a showing can be made. This ruling is supported by the California policy favoring the resolution of disputes on their merits. (See *Laguna Village, Inc. v. Laborers' Internat. Union of North America* (1983) 35 Cal.3d 174, 181.)<sup>2</sup> This ruling is subject to appeal to the Board pursuant to PERB Regulation 32200. (See also PERB Regulation 32190(f).)

### FINDINGS OF FACT

The District contains one college campus, the Santa Barbara Community College (College). At any given time, the District services approximately 20,000 students in its for-credit programs and approximately 22,000 additional students in its non-credit programs. The District employs approximately 264 faculty members in its for-credit programs and between approximately 500 and 550 faculty members in its non-credit programs.

#### **I. Organization of the District**

The District's affairs are governed by a Board of Trustees, comprising seven publicly elected officials. The members of the Board of Trustees are not employees of the District. Any new District policy or modification to an existing District policy must be approved by the Board of Trustees.

Only one District position reports directly to the Board of Trustees: the Superintendent/President. That position is currently held by Dr. Andreea Serban. Five District employees report directly to the Superintendent/President: the Executive Vice President of Educational Programs, the Vice President of Continuing Education, the Vice President of

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<sup>2</sup> It is from this same principle that PERB has elected to accept filing of the District's closing brief despite the fact that it did not comply with PERB Regulation 32212. Under that Regulation, "[a]ny party filing a brief shall *file the original and one copy with the Board agent.*" [Emphasis supplied.] PERB received a fax-filing of the District's closing brief on January 11, 2010 and the original on January 12, 2010. No copy was submitted with the original filing. Fax filing does not excuse the requirements to submit the original and the required number of copies with PERB. (PERB Regulation 32135(c).)

Educational Programs, the Vice President of Continuing Education, the Vice President of Human Resources, the Vice President of Business Services, and the Vice President of Information Technology. It is undisputed that all of these positions should be excluded from the proposed bargaining unit.

The District's operations are broadly separated into two divisions: the Educational Programs Division and the Continuing Education Division.

The Educational Programs Division offers instruction and services to District students on a for-credit basis. The Executive Vice President of Educational Programs, presently held by Dr. Jack Friedlander, is responsible for supervising this Division. Friedlander currently has seven Deans of Educational Programs and one Associate Dean that report directly to him.<sup>3</sup> Some of the Deans of Educational Programs and the Associate Dean have Certificated Directors that report directly to them. The Deans, the Associate Dean, and the Directors are each responsible for some aspect of the District's programs, which may include supervising faculty or staff.

The Continuing Education Program offers instruction and services to District students on a non-credit basis. The Vice President of Continuing Education, currently held by Dr. Ofelia Arellano, is the position responsible for this Division. Arellano has one Dean of Instruction that reports directly to her. That position, held by Ron Christie, has one Director of

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<sup>3</sup> The Associate Dean of Physical Education/Health Education/Dance and Athletic Director is also a part of the Division of Educational Programs and would normally report to Friedlander. At present, the position is vacant and the employees performing the duties of this position report to the Superintendent/President.

Continuing Education that reports to him. At the time of the hearing, the District had plans to hire additional Directors of Continuing Education that will report to Christie.<sup>4</sup>

## **II. District Goals, Policies, Procedures, and Programs**

The goals of the District are set forth in a document referred to as the College Plan. The College Plan is an outline of the critical institutional goals of the District over a three-year period. Because the College Plan addresses all aspects of the District's operations, it is developed in consultation with several groups in the District. The College Plan must be adopted by the Board of Trustees.

The rules controlling the basic operation of the District typically come in the form of written District policies. District policies provide guidance on how to carry out the operations of the District. Examples of existing District policies are its conflict of interest code, its statement of non-discrimination, and its budgeting principles. Like the College Plan, policies must be approved by the Board of Trustees. The District has also developed procedures which provide further guidance on how to apply District policies. Procedures are also subject to review by the Board of Trustees, but do not always require express approval.

The District's educational and student services are offered in the form of programs. Examples of District educational programs include marketing, finance, and distance education. Other examples of programs are related to student services such as the Extended Opportunities, Programs, and Services (EOPS) program as well as the Cooperative Agencies Resources for Education (CARE) and CalWORKS programs. These programs provide disadvantaged students or students who are single parents with educational and work-study opportunities.

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<sup>4</sup> Educational Programs and the Continuing Education Divisions also employ classified administrators. Because classified positions are not at issue in this petition, these positions will not be discussed in this decision.

### **III. The District's Decision-Making Process**

The District's decision-making process has variously been referred to as "inclusive," "collaborative," and a "shared governance" process. There is general agreement from the parties that the District seeks input from students, faculty, staff, and administrators, as represented by various constituent bodies, when making policy decisions. Only the Board of Trustees, however, has the authority to approve or deny changes to the District's goals, policies, and programs.

The Board of Trustees is responsible for providing general direction and overall governance for the District. It is for this reason that the Board of Trustees must approve both the College Plan and all proposals for new or modified policies prior to adoption. Proposals for new policies or modifications to existing policies may be discussed at the Board of Trustees' monthly meetings. District personnel are invited to and often do attend and participate in these meetings. The Board of Trustees also holds additional public meetings, referred to as Study Sessions, for the purpose of discussing and proposing changes to existing District programs. District employees also participate in Study Sessions.

The District has a Board Policy and Administrative Procedures (BPAP) Committee that is charged with reviewing all policies and procedures at the District. The committee is composed of Vice President of Human Resources Sue Ehrlich, Dean of Educational Programs Marilyn Spaventa, Director of Admissions and Records Allison Curtis,<sup>5</sup> three faculty members, three classified unit members, one student member, and one support staff member. The BPAP Committee is responsible for reviewing every modification of existing policies and procedures as well as every proposal for a new policy or procedure. In addition, the BPAP

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<sup>5</sup> This position is not included in the Teamsters' petition.



Committee is undergoing an independent review of all of the District's existing policies and procedures.

Proposals for new or revised policies or procedures can originate from several sources such as students, faculty, staff, Deans, Directors, Vice Presidents, the Superintendent/President, the Board of Trustees, or other District committees. Such proposals are brought to the BPAP Committee for review. Proposals are reviewed in consultation with other District committees, as appropriate. For example, proposals for policy changes concerning an academic or curriculum policy would require input from the District's Academic Senate. Proposals concerning money received by the District are reviewed by the College Planning Council. It is possible that a single policy proposal be reviewed by multiple committees. After committee-level review is complete, the proposal is referred to the Superintendent/President for placement on the agenda of the next Board of Trustees Study Session. At that point, the proposal is reviewed by the Board and a decision is made to approve or deny the proposal.

The concept for academic programs is often generated by an academic Dean or Director and developed into a proposal in consultation with the Executive Vice President of Educational Programs. Once a proposal is developed, the proposed program is brought to the Superintendent/President who may place the proposal on the agenda of a Board of Trustees Study Session.

If the proposal is addressed at a Study Session, the Dean or Director that assisted with the creation of the proposal may attend the meeting to discuss the matter with the Board of Trustees directly. Such interaction is a frequent occurrence but attendance by Deans and Directors is not required. The Board of Trustees ultimately decides whether to approve the proposed program. If a proposed program is approved by the Board of Trustees, then the Dean or Director that initiated the program is typically responsible for oversight of the program.

#### **IV. The Positions in Dispute**

The Teamsters has included all Certificated Deans and Certificated Directors in its petition. These positions, 16 in total, are employed in either the Division of Educational Programs or the Division of Continuing Education.

##### **A. The Division of Educational Programs**

The following is a discussion of the positions in dispute in the District's Division of Educational Programs.

##### **1. Dean of Educational Programs**

This position reports directly to the Executive Vice President for Educational Programs. There are currently seven employees in this position: Douglas Hersh, Mary "Diane" Hollems, Keith McClellan, Benjamin Partee, Guy Smith, Alice Scharper, and Marilyn Spaventa. Although each of these positions is responsible for a different aspect of the District's operations, the positions share several common traits. This position is responsible for overseeing the District's various academic or students services programs. Oftentimes, this requires that the employees in this position supervise both full- and part-time faculty and play some role in the hiring, firing, and evaluation of faculty.

Deans of Educational Programs are expected to effectuate the District's goals as articulated in the College Plan within their individual programs. This may require that programs be expanded or modified to achieve District goals. District programs cannot be independently modified by a Dean. Instead, Deans develop proposals for changes to existing programs in consultation with the Executive Vice President of Educational Programs. For example, Dean Smith played a role in developing a proposal to allocate a facility for the School of Media Arts, which encompasses several programs Smith oversees. Smith spent time determining the needs of the faculty that would utilize the new facility and conveyed those

needs to the architects of the building. Smith also played a role in community fundraising for the project. Generally speaking, Smith was required to consult with Friedlander prior to taking action on this project. Smith lacked the authority to enter into agreements or finalize plans without authorization from his superiors. The building project is currently being postponed due to budget concerns.

In another example, Dean Partee helped develop a co-curricular transcript system at the District. Co-curricular transcripts assist students in displaying leadership and other civic-involvement activities for prospective employers or transfers to other educational institutions. Partee developed this concept to improve one of his areas of responsibility, student services. Partee was not permitted to implement the co-curricular transcript system without authorization from Friedlander and, ultimately, the Board of Trustees.

Dean Spaventa proposed hosting Summer Institutes, or summer language courses, at the District during periods where the College campus was not fully utilized. This concept was developed in response to Friedlander's request that Spaventa explore ways to provide services at the College during summertime. The Summer Institute program was developed in consultation with Friedlander and required approval from the Board of Trustees prior to implementation.

Dean Hollems developed a proposal for creating a Professional Development program that allows employers to utilize District resources for employee training programs. Hollems currently oversees that program which includes meeting with employers and negotiating the terms of a training program. At Friedlander's request, Dean Scharper developed proposals for the District's programs designed to raise student achievement.

As part of the duty to improve programs, Deans of Educational Programs may develop tactical plans to achieve objectives towards the goals set forth in the College Plan. Dean Hersh

developed a tactical plan to increase student enrollment in District distance education courses from the Fall 2007 term until the Spring 2011 term. This involves identifying areas for improvement and devising solutions in those areas. Implementing a tactical plan may require approval from the Executive Vice President. For example, Hersh's proposal to use existing funds to either market the District's distance learning opportunities or contact all existing distance education students requires prior approval before implementation.

The Dean of Educational Programs is also expected to make recommendations for policy and procedure changes when appropriate. Witnesses from both parties concurred that changes to existing policy must be made through the District's shared governance process.

The Dean of Educational Programs may also pursue grants for the programs under each Dean's area of responsibility, in accordance with the College Plan. Grant opportunities may originate from a number of different places such as individual research, Friedlander, other deans, or faculty. If a grant opportunity is recognized, the Dean of Educational Programs is responsible for developing a proposal for the grant, with or without the assistance of a grant writer. Friedlander testified that the District relies on Deans of Educational Programs to identify and develop grant proposals because neither his position nor the Superintendent/President have the expertise in each Dean's programs or the time to pursue such opportunities. Nevertheless, Deans of Educational Programs require approval from Friedlander to pursue a grant and require approval from the Board to Trustees before accepting grant funds and initiating a program through a grant.

Deans of Educational Programs also sit on various District committees. For example, Dean Spaventa is a part of the BPAP committee, described above. Deans of Educational Programs may sit on the Executive Committee in place of the Executive Vice President if Friedlander is not available to attend a meeting.

## **2. Associate Dean of Career Technical Education**

The District currently employs one individual in the position of Associate Dean of Career Technical Education, Betty Pazich. Pazich has overall responsibility for the District's Perkins Act program, which is a federally funded vocational education program. Pazich also oversees various vocational programs at the District including nursing programs and radiography. Pazich is responsible for ensuring that the District is in compliance with regulations regarding these programs. Pazich also serves as chairperson for the District's Perkins Committee comprising faculty and deans from various District departments that are associated with the Perkins Act program. The committee is responsible for discussing ideas and developing projects for the Perkins Act program.

Pazich is also responsible for supervising faculty and staff in the programs she oversees. This includes the ability to resolve disputes between faculty as well as with students.

## **3. Associate Dean of Physical Education/Health Education/Dance and Athletic Director**

This position is currently vacant. However, the duties of the position are currently being performed by two District employees, Ellen O'Connor and Kathy O'Connor.<sup>6</sup> This position is responsible for the District's intercollegiate athletic teams. This includes responsibility over compliance with state laws regarding collegiate athletics, budgeting, fundraising, as well as logistics in terms of securing a field or stadium, concessions, and officials for athletic events. This position also oversees the District's Physical Education and Health Education programs. These responsibilities include supervising faculty members.

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<sup>6</sup> No evidence was presented regarding the job title of these employees.

#### **4. Senior Director of International Students and Services/Study Abroad**

The District employs one individual in the position of Senior Director of International Students and Services/Study Abroad. This position is currently held by Carola Smith. Smith oversees the District's International Student Program and its Study Abroad Program. Smith reports directly to Dean Spaventa. Oversight of these programs involves working with representatives from different countries, conducting site inspections, and making determinations regarding foreign facilities and operations. As part of her role in these programs, Smith is a member of the District's International Education Committee. The committee is composed of Smith, faculty members, and one staff member. The committee is responsible for seeking input from the members of the Study Abroad and International Students programs and developing recommendations for changes to the programs. Those recommendations are presented to the Superintendent/President.

At one point, the District sought to increase the number of students accepted into the International Students program. The parties presented conflicting evidence regarding this expansion. On behalf of the District, Friedlander testified that Smith was requested to research and develop the proposal for expanding the International Students program. Friedlander further testified that Smith presented this proposal to the District's Board of Trustees. Smith, on the other hand, testified that the concept for the proposal began with the Superintendent/President. Smith stated that she advised the Superintendent/President on the feasibility of the proposal, but did not develop the proposal herself nor did she present any aspect of the proposal to the Board of Trustees. The Superintendent/President did not testify. Friedlander does not dispute the Superintendent/President's involvement in developing this proposal. Nor did Friedlander state that he attended either the meetings between Smith and the Superintendent/President or the Board of Trustees meeting addressing the proposal. Thus,

Smith's testimony, which purports to be a first-hand account, is credited over Friedlander's testimony. Moreover, because Smith reports directly to Dean Spaventa, Friedlander may not be directly aware of her activities.<sup>7</sup>

**5. Director of Kinko's Early Learning Center**

The District employs one individual in the position of Director, Kinko's Early Learning Center. That position is currently held by Elisabeth Rizzo. Rizzo oversees the operations of the Kinko's Early Learning Center. Rizzo reports directly to Associate Dean Pazich. Pazich has overall responsibility for the Kinko's Early Learning Center.

**6. Director of EOPS and CARE**

The District employs one individual in the position of Director of EOPS and CARE. That position is currently filled by Marsha Wright. Wright's area of responsibility includes oversight of the District's EOPS and CARE programs. As part of this role, Wright assisted in developing the District's Running Start program, which helps high school students make the transition to college by offering coursework and activities over the summer, including field trips. This program was created in response to a citizen donor seeking a way to contribute to the college in a way that affects students in public schools. Wright also assisted with the development of programs assisting single parents to attend college and offering educational programs to individuals recently released from jail. Wright is also responsible for supervising staff.

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<sup>7</sup> Although it may be unusual for modification to a District program to originate with the Superintendent/President, this occurrence may be explained by the fact that the proposal to expand the International Students program was of particular importance to the District due to its ability to generate revenue.

## **B. The Continuing Education Division**

The following is a discussion of the positions in dispute in the District's Division of Continuing Education.

### **1. Dean of Instruction**

The Dean of Instruction position is responsible for the District's Continuing Education Program, English as a Second Language, Elderly Communications, Arts and Crafts, Adult High School, and Career/Technical Education programs. This position reports to the Vice President of Continuing Education and assists with the development of budgets. Each of the programs mentioned above is assigned to a Director of Continuing Education for day-to-day oversight. The Director responsible for each program determines the curriculum for the programs.

The District employs one Dean of Instruction. That position is currently held by Ron Christie. Christie is responsible for oversight in these areas, including making decisions regarding scheduling and hiring.

### **2. Director of Continuing Education**

This position is responsible for the day-to-day operations of the various programs in the Office of Continuing Education. This position reports directly to the Dean of Instruction. The District currently employs one person in the Director of Continuing Education position, Jack Bailey. Bailey primarily oversees the ESL program. This includes responsibility over a \$500,000 grant as well as other educational grants. Bailey directs how the program is run, coordinates classes, makes hiring decisions and manages budgets.

The District has plans to hire two additional Directors of Continuing Education. The District has selected Andrew Harper to oversee its Frail/Elderly program as well as the Mind and Supermind lecture series. Harper will be expected to work with consultants to develop the



lecture series. Regarding the Frail/Elderly program, Harper will be expected to determine course offerings and manage the program budget.

The District also selected Carol Flores to fill another Director of Continuing Education position. Flores will be responsible for the District's Adult High School program, the Inmate Education program, and the Vocational Careers program. Flores will be expected to meet with representatives of local jails and determine issues such as staffing, course offerings, and testing.

### ISSUE

The issues of this hearing are whether the proposed unit of certificated supervisors consisting of Certificated Deans and Certificated Directors is an appropriate bargaining unit, and which positions, if any, must be excluded as managerial.

The Teamsters contends that none of the positions identified in its petition are managers as defined by EERA because none of the positions have the authority to deviate from established District policy. The Teamsters further contends that the positions at issue may only recommend policy changes to their supervisors and that such recommendations are insufficient to qualify as a manager.

The District does not dispute either that the disputed positions lack the authority to deviate from established District policy or that the disputed positions' policymaking role is limited to making recommendations and proposals. The District instead argues that the question of managerial authority must be considered in light of the District's shared governance structure. The District contends that, under the shared governance structure, the positions at issue play an important role in how policies are changed and how programs are developed. Accordingly, the District argues that all of the positions at issue are managers.

## CONCLUSIONS OF LAW

EERA section 3540.1 states in pertinent part:

(g) “Management employee” means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(m) “Supervisory employee” means 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 that 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.

EERA entitles public school employees the right to form bargaining units and be represented in their employment conditions by an employee organization of their choosing. (Gov. Code, § 3543(a).) This right is extended to supervisory personnel so long as no bargaining unit of supervisors is represented by the same employee organization as the employees that those supervisors supervise. (Gov. Code, § 3545(b)(2).) Employees properly designated as managers, on the other hand, are excluded from the definition of a public school employee under EERA, and consequently denied collective bargaining rights. (Gov. Code, § 3540.1(j); *Los Angeles Unified School District* (2004) PERB Decision No. 1665 (*LAUSD*).)

Because of management employees’ lack of collective bargaining rights, the Board has found that “great care must be exercised in determining who should be considered a management employee.” (*LAUSD, supra*, PERB Decision No. 1665, quoting *Oakland Unified School District* (1977) EERB<sup>8</sup> Decision No. 15.) In other words, it must be demonstrated that

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<sup>8</sup> Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB. (See Gov. Code, § 3540; *Madera Unified School District* (2007) PERB Decision No. 1907, fn. 3, other citations omitted.)

the position at issue is “clearly allied with management.” (*Paramout Unified School District* (1977) EERB Decision No. 33.) For similar reasons, the “burden of proof rests with the party designating an employee as management.” (*LAUSD, supra*, PERB Decision No. 1665, citing *San Francisco Unified School District* (1977) EERB Decision No. 23.)

The Board has long interpreted EERA section 3540.1(g) to mean that a management employee must have significant responsibilities for both formulating district policies and for administering district programs. (*Oakland Unified School District* (1981) PERB Decision No. 182.) Relying in part on similar federal precedent, the Board found such an interpretation of Government Code section 3540.1(g) was necessary because there would otherwise be no substantive difference between EERA’s definition of management and supervisory employees. (*Ibid.*)

The requirement that a manager have significant responsibilities for formulating district policy means that the manager must have the discretionary authority to develop or modify institutional goals and priorities. (*Hartnell Community College District* (1979) PERB Decision No. 81 (*Hartnell CCD*)). The Board found that policy formulation under EERA section 3540.1(g) is defined as any policy that was adopted at the District level, even if the policy may not have a “district-wide” application. (*Grossmont-Cuyamaca Community College District* (2008) PERB Decision No. 1958 (*Grossmont CCD*)). The requirement that a manager have significant responsibilities for administering district programs means that the manager must have the authority to implement programs through the exercise of discretion. (*Hartnell CCD, supra*, PERB Decision No. 81.) The issue of whether a position is part of management is a question of law and fact, and must be answered in terms of the employees’ actual job responsibilities and relationship to the employer. (*Ibid.*)

In *Lompoc Unified School District* (1977) EERB Decision No. 13, the Board found that subject coordinators lacked the discretion necessary to be considered managers where their recommendations for policy changes had to be approved by at least two levels of supervisors prior to adoption and where there was little evidence that the coordinators' exercise of judgment went beyond established policy. Similarly, academic department chairpersons should not be considered managers where the positions merely make recommendations to a committee for further approval. (*Ventura County Community College District* (1980) PERB Decision No. 139 (*Ventura CCD*)). This is true even where a chairperson's recommendation is routinely accepted and eventually adopted into policy. (*Ibid.*)

However, PERB found that a position responsible for overseeing and maintaining compliance with a district's affirmative action plan was properly designated as a manager where the employee had the authority to bind the district to a particular course of action and had the discretion to deviate from existing policy regarding affirmative action. (*Ventura CCD, supra*, PERB Decision No. 139, citing *Berkeley Unified School District* (1979) PERB Decision No. 101.)

In *Grossmont CCD, supra*, PERB Decision No. 1958, the Board addressed the issue of whether administrators should be considered managers in the context of a community college district employing a collaborative decision-making process. In that case, the district's governance structure contained a governing board, a single executive (chancellor) reporting directly to the governing board, followed by a cabinet of administrators reporting directly to the chancellor. Two members of the chancellor's cabinet served as president of one of that district's two college campuses. Each member in the chancellor's cabinet, including the two college presidents, had a cabinet of other administrators. (*Ibid.*)

The Board recognized that in a collaborative environment, the originator of a policy recommendation plays a significant role in the formulation of that policy, even where the recommendation must be reviewed prior to approval. (*Grossmont CCD, supra*, PERB Decision No. 1958.) Accordingly, the Board held that all of the disputed positions that were members of the chancellor's cabinet were properly designated as managers, reasoning that those positions made recommendations to the chancellor. (*Ibid.*) The Board also found that those positions made recommendations regarding proposals on significant issues such as the district's legislative agenda, a condensed district-wide calendar, and the district's overall strategic plan. The Board further held that those positions administered various district programs such as the legislative initiatives program and performing an environmental scan of the district's community. (*Ibid.*)

At the college level, the Board found that the members of each of the college presidents' cabinets were also properly designated as managers. (*Grossmont CCD, supra*, PERB Decision No. 1958.) Those positions were responsible for activities such as developing the district's plan to treat all students equally as well as reviewing the district's policies to conform to a state-wide standard. (*Ibid.*)

The Board in *Grossmont CCD, supra*, PERB Decision No. 1958, also found that academic deans, whose primary role is to oversee various academic disciplines at the district, were not managers. Academic deans were responsible for making recommendations to members of the college presidents' cabinet regarding classes, budgets, and other issues within their discipline. (*Ibid.*) In this decision, the Board continued to recognize that an employee's ability to provide input is not evidence of significant responsibility over policy formation where such input is similar to that provided by employee organizations, parents, and other

administrative personnel. (*Ibid.*, citing *Franklin-McKinley School District* (1979) PERB Decision No. 108.)

## **I. Disputed Positions in the Division of Educational Programs**

The following is a discussion of the positions in dispute in the District's Division of Educational Programs.

### **A. Dean of Educational Programs**

Applying the relevant standards to the positions at issue, the Dean of Educational Programs position plays a significant role both in the formulation of District policies and the administration of District programs. Considering first the issue of administering District programs, it is undisputed that each of the Deans oversees multiple academic or student programs at the District. For example, Dean Smith is responsible for overseeing the School of Media Arts, the Business Division, and the Entrepreneurship Center. Dean Partee is responsible for the District's financial aid, cosmetology, student life, and student discipline programs at the District. Dean Spaventa is responsible for overseeing the science and math departments as well as programs regarding international students and students with disabilities.

Each Dean of Educational Programs is responsible for supervising faculty and/or staff within the programs they oversee. This often includes discretion in scheduling and evaluating employees as well as assigning work. Deans of Educational Programs are also responsible for developing and adhering to budgets for the programs under their supervision. Deans may develop tactical plans to assure that specific programs achieve the District's goals as set forth in the College Plan.

Under these circumstances, there is sufficient evidence to conclude that the Dean of Educational Programs position administers District programs. These positions exercise discretion when evaluating the employees they supervise as well as developing tactical plans or

other methods to achieve the Districts goals and objectives. These positions may also make spending decisions within budgets they develop.

There is also sufficient evidence to demonstrate that the Dean of Educational Programs plays a significant role in formulating District policy. According to the District's shared governance process, all employees as well as students and other members of the public play a role in developing the District's goals and operational policies. The Dean of Educational Programs' role in this type of policy development does not appear to be significantly greater than that of faculty, students, or other members of the public.

The Dean of Educational Programs position does, however, play an important role in improving District educational programs to achieve the District's goals as articulated in the College Plan. As explained above, "district policies" need not be "district-wide" policies, as long as the policy requires approval at the District level. (*Grossmont CCD, supra*, PERB Decision No. 1958.) Under this definition, changes to the District's Educational Programs, which require Board of Trustees approval, qualify as "district policies" under EERA section 3540.1(g).

Friedlander testified that his position has overall responsibility for all District Educational Programs, but that he lacks the time and expertise necessary to generate proposals for improving these programs. Rather, Friedlander testified that he expects all of the employees in the Dean of Educational Programs position to develop proposals to expand or modify the various programs they oversee. For example, as part of his responsibility over the District's Student Services program, Dean Partee developed proposals for the co-curricular transcripts program as well as expanding the District's intra-mural sports program. Dean McClellan, whose duties include overseeing the District's articulation agreements with other colleges, assisted with the development of software that tracks and updates those agreements.

Similarly, Dean Hersh researched and proposed replacing the District's course management software. Although the Deans are not permitted to make recommendations directly to the Board of Trustees, Deans regularly attend District Study Sessions and make presentations regarding proposed changes to District programs.

The Teamsters does not dispute Friedlander's characterization of the duties of the Dean of Educational Programs, but stresses that all such proposals made by Deans of Educational Programs are reviewed, first by Friedlander, then by the Superintendent/President, and then considered by the Board for approval. Given the multiple levels of review and the position's inability to implement proposals independently, the Teamsters contends that the Dean of Educational Programs does not play a significant role in creating District policy.

As mentioned above, the Board has held that, in a community college district that employs a shared governance philosophy, the ability to develop and make policy recommendations to a district's decision-makers is the most significant role a manager can have with regard to formulating district policies. (*Grossmont CCD, supra*, PERB Decision No. 1958.) Thus, the mere fact that the Dean of Educational Programs can only propose changes to the District's educational programs and not implement them independently does not demonstrate that these positions are not managers.<sup>9</sup>

The Teamsters submitted as evidence a copy of a collective bargaining agreement between the Los Angeles Community College District and another Teamsters' local regarding

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<sup>9</sup> For this reason, the Teamsters' reliance on *Flintkote Co.* (1975) 217 NLRB 497 is unpersuasive. That case concerned whether engineers, whose job duties included developing proposals for reducing costs or increasing productivity, were properly designated as managers. That case did not concern an employer that employed a shared governance decision-making structure and accordingly does not provide an adequate basis for departing from the reasoning set forth in *Grossmont CCD, supra*, PERB Decision No. 1958.



a unit of supervisory personnel. However, because no evidence was presented regarding the positions in that bargaining unit, the relevance of this agreement to the present case is minimal.

The Dean of Educational Programs position in this case is similar to the members of the college presidents' cabinets in *Grossmont CCD, supra*, PERB Decision No. 1958. Like those positions, the Dean of Educational Programs is responsible for developing proposals for modifying policies for District programs and assuring that those programs adhere to the District's asserted goals. In *Grossmont CCD, supra*, PERB Decision No. 1958, the Board found the members of the presidents' cabinets to be managers. Likewise, in the present case, the District has met its burden of demonstrating that the Dean of Educational Programs position is management and should be excluded from the petitioned-for unit.

**B. Associate Dean of Career Technical Education**

The District contends that this position is similar to the senior director position in *Grossmont CCD, supra*, PERB Decision No. 1958. In that case, the senior director serves as that district's contact person for all governmental affairs at the state and national level. In addition, the position is responsible for developing legislation that that district will support in consultation with other various district groups. The Board determined that position to be management. (*Ibid.*)

The District in this case has not met its burden of establishing that the Associate Dean of Career Technical Education position plays a significant role in both the formulation of District policy and administration of District programs. The one employee in this position, Associate Dean Pazich, did not testify at the hearing. Friedlander testified that Pazich is responsible for the District's Perkins Act program. This includes supervising faculty and ensuring compliance with federal regulations. It is unclear whether the position plays any role in the development of legislative proposals for the Perkins Act or any other District program.

This was a key aspect in the Board's decision to find the senior director position to be management in *Grossmont CCD, supra*, PERB Decision 1958.

Pazich also is the chairperson of a committee on the Perkins Act program. The committee is responsible for making recommendations for improvements or modifications to the Perkins Act program, but there was no evidence that Pazich, as the chairperson, played a more significant role than the other committee members in developing proposals related to the Perkins Act program. The Board has previously held that the ability to provide input into district policy is not evidence of managerial status where the level of input is no different from other faculty or staff. (*Grossmont CCD, supra*, PERB Decision No. 1958, citing *Franklin-McKinley School District, supra*, PERB Decision No. 108; see also *Ventura CCD, supra*, PERB Decision No. 139.)

In this case, the District has not established that Pazich's role as the chairperson of the Perkins Act program committee is more significant than any other committee member, which includes other deans and faculty in the Educational Programs Division. At most, Pazich's oversight role of the Perkins Act program evidences a role in administering District programs. This is not sufficient to establish that this position is management.<sup>10</sup> In addition, the Board has previously found that responsibility over assigning work, resolving disputes, and addressing staffing issues are indicia of supervisory status. (*Berkeley Unified School District (1979)* PERB Decision No. 101.) Therefore, this position is properly included in the petitioned-for unit.

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<sup>10</sup> The District correctly asserts that the job description for this position and other positions at issue includes the phrase "policy development." The job description does not, however, elaborate on this position's role in policy formulation. As explained above, the issue of whether a position is management is determined primarily by the position's actual job duties. (*Hartnell Community College District, supra*, PERB Decision No. 81.)

**C. Associate Dean of Physical Education/Health Education/Dance and Athletic Director**

This position is currently vacant. PERB has previously declined to make unit placement decisions concerning vacant positions because there was insufficient information to make a unit determination. (*Marin Community College District* (1978) PERB Decision No. 55 [“The job title alone is not sufficiently descriptive of the duties of the incumbents in this position.”]; see also *Mendocino Community College District* (1981) PERB Decision No. 144a.) In the present case, the duties of the Associate Dean, Physical Education/Health Education/Dance and Athletic Director are being performed on an interim basis by other District employees. Moreover, there was no dispute over the duties assigned to this position. Therefore, PERB may appropriately make a unit determination regarding this position.

The District has not established that this position should be considered management. Neither of the employees performing the duties of this position testified at the hearing. Friedlander testified that this position is responsible for the District’s Intercollegiate Athletics program, as well as its Physical Education and Health programs. As part of this role, the position must supervise staff, manage budgets, fundraise, and plan the logistics of various athletic events. This position also has the ability to pursue grants, but no evidence was introduced regarding an instance where this occurred. Unlike with the Dean of Educational Programs position, there was no evidence presented that an incumbent in this position has proposed changes or modifications to the programs it oversees. In *Grossmont CCD, supra*, PERB Decision 1958, the Board found that the academic dean position was not management despite supervising staff, managing budgets and managing the day-to-day operations of academic disciplines. The Board found that such positions lacked a significant role in formulating district policy. (*Ibid.*)

In the present case, the District has not established what role, if any, this position plays in the formulation of District policies. As with the Associate Dean of Career Technical Education position, the evidence presented at the hearing, at most, demonstrates that this position administers District programs. This is not sufficient to demonstrate that this position should be classified as management. (*Oakland Unified School District, supra*, PERB Decision No. 182.) Therefore, this position should be included in the petitioned-for unit.

**D. Senior Director of International Students and Services/Study Abroad**

The District has not met its burden of demonstrating that this position plays a significant role both in the formulation of District policy and the administration of District programs. Similar to the Associate Dean of Career Technical Education, this position sits on a committee regarding the District programs it oversees. The committee is responsible for making recommendations for modifications and improvement to the programs. There was no evidence presented regarding whether the Senior Director's role in this committee was any different from its other members. As explained above, the ability to make recommendations to a committee is not sufficient to demonstrate managerial status. (*Grossmont CCD, supra*, PERB Decision No. 1958, citing *Franklin-McKinley School District, supra*, PERB Decision No. 108; see also *Ventura CCD, supra*, PERB Decision No. 139.)

In addition, Smith's advisory role in the Superintendent/President's proposal to increase the number of students in the International Studies program does not demonstrate a significant role in the formulation of policy. Smith did not develop the policy proposal and did not present the proposal to the District's Board of Trustees. Under these circumstances, this position does not play a significant role in the formulation of District policy. Therefore, it should be included in the petitioned-for unit.

**E. Director of Kinko's Early Learning Center**

The District has not provided sufficient information to conclude that this position should be designated as management. The one incumbent in this position, Rizzo, did not testify at the hearing. Friedlander testified that this position is responsible for the day-to-day operations of the Kinko's Learning Center. Overall responsibility for this program is placed with Associate Dean Pazich. Little evidence was presented regarding the duties of this position. Therefore, it remains unclear what role, if any, this position has with either the administration of District programs or the development of District policy. For this reason, the District has not demonstrated that this position is "clearly aligned with management." (*Paramout Unified School District, supra*, EERB Decision No. 33.) Therefore, this position should be included in the petitioned-for unit.<sup>11</sup>

**F. Director of EOPS and CARE**

The District has demonstrated that this position plays a significant role both in the administration of District programs and the formulation of District policy. Friedlander testified that the incumbent in this position, Wright, developed proposals for multiple new programs with the District's EOPS program. This includes the program for high school students making the transition to college, the program for assisting single parents in getting access to higher education, and the program providing educational opportunities to former prison inmates. According to Friedlander, Wright saw the need for these programs and, with

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<sup>11</sup> EERA section 3545(b)(2) does not preclude Rizzo from being included in the same bargaining unit as her supervisor, Pazich, notwithstanding the language that a supervisory employee "shall not be represented by the same employee organization as employees whom the supervisory employee supervises." The Board decisions interpreting this section have primarily focused on whether supervisory employees may be represented by the same employee organization as rank-and-file employees. (See e.g., *Los Angeles Unified School District* (1987) PERB Decision No. 424a.) Moreover, EERA section 3542(b)(2) also specifies that a supervisory unit shall include all supervisory employees.

permission from Friedlander, developed the proposals herself. The fact that Wright's proposals needed approval from her supervisors and, ultimately, the District's Board of Trustees is not controlling here. (*Grossmont, CCD, supra*, PERB Decision No. 1958.) In addition, Wright is responsible for the operations of these programs, as well as other programs under the District's EOPS and CARE programs. This includes the supervision of staff and the making of operational decisions. Based on this information, the District has met its burden of showing that this position plays a significant role in both the formulation of District policies and the administration of District programs. Accordingly, the position should be excluded from the petitioned-for unit.

## **II. Disputed Positions in the Office of Continuing Education**

The following is a discussion of the positions in dispute in the District's Division of Continuing Education.

### **A. Dean of Instruction**

The District has not established that this position is properly designated as management. Dean Christie, the current incumbent in this position, oversees the various programs and services offered in the Continuing Education Division. This includes the development of budgets, supervising staff, as well as hiring and scheduling decisions. As explained above, the Board in *Grossmont CCD, supra*, PERB Decision No. 1958, found that academic deans, who had the ability to supervise staff, administer budgets, and make decisions regarding course offerings were not managers.<sup>12</sup> The Dean of Instruction's duties are substantially similar to the academic dean position in the *Grossmont CCD* case. Also stated

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<sup>12</sup> The District argues that this position is similar to that of the college president position in *Grossmont CCD, supra*, PERB Decision No. 1958. However, that position was not in dispute in the *Grossmont CCD* case and, accordingly, no unit determination was made with respect that that position.

above, the Board has previously found that these duties were evidence of supervisory status. (*Berkeley Unified School District, supra*, PERB Decision No. 101.) Therefore, this position should be included in the petitioned-for unit.

**B. Director of Continuing Education**

The District currently employs one Director of Continuing Education, Bailey, but has plans to hire additional personnel into the position. Bailey currently oversees the District's ESL program. The District has plans to hire additional Directors of Continuing Education to oversee the District's Frail/Elderly program, the Mind/Supermind lecture series, the Adult High School Program, the Inmate Education Program, and the Vocational Careers program. This position is responsible for supervising staff, making course offering determinations, managing program budgets, and administering grants related to the program. As with the Associate Dean of Physical Education/Athletic Director, the District contends that the Director of Continuing Education has the authority to pursue grants but has not presented evidence of anyone in this position ever doing so.

As explained above, the Board in *Grossmont CCD, supra*, PERB Decision No. 1958, found that academic deans, who had the ability to supervise staff, administer budgets, and make decisions regarding course offerings, were not properly excluded from a petitioned-for unit as management employees. The Director of Continuing Education position in this case has similar responsibilities to the academic dean position. Also stated above, the Board has previously found that these duties were evidence of supervisory status. (*Berkeley Unified School District, supra*, PERB Decision No. 101.) The District has not met its burden of demonstrating that the Director of Continuing Education position plays a significant role in developing District goals, policies, procedures, or programs. Therefore, this position should be included in the petitioned-for unit.

## PROPOSED ORDER

For the reasons discussed above, the following disputed positions should be included in the petitioned-for bargaining unit: (1) Associate Dean of Career Technical Education; (2) Associate Dean of Physical Education/Health Education/Dance and Athletic Director; (3) Senior Director of International Students and Services/Study Abroad; (4) Director of Kinko's Early Learning Center; (5) Dean of Instruction; and (6) Director of Continuing Education.

The following disputed positions should be excluded from the petitioned-for bargaining unit: (1) Dean of Education Programs; (2) Director of EOPS and CARE.

Pursuant to Government Code section 3544.1 and PERB Regulation 33480, and based on the proof of majority support demonstrated by the Teamsters and the absence of any intervening employee organization, an election will not be scheduled and the District is required to grant the request for recognition in the unit determined to be appropriate.<sup>13</sup> Accordingly, pursuant to its authority under PERB Regulation 33480, PERB ORDERS that the Teamsters shall be certified as the exclusive representative of the unit described in this decision upon issuance of a final decision in this matter.

Pursuant to PERB Regulation 33450, within 10 days following issuance of a final decision in this matter, the District is also required to post on all employee bulletin boards at each campus where members of the unit described in this decision are employed. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.

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<sup>13</sup> The unit determination in this decision does not affect PERB's earlier determination that the Teamsters has demonstrated proof of majority support among the District's certificated supervisors.



## RIGHT OF APPEAL

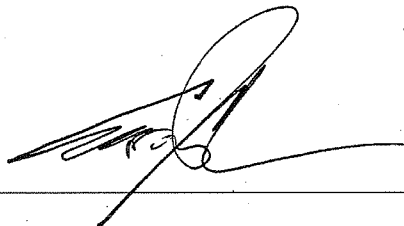
Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95811-4124  
(916) 322-8231  
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, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 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, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 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, §§ 32300, 32305, 32140, and 32135, subd. (c).)

A handwritten signature in black ink, appearing to read 'Eric J. Cu', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

Eric J. Cu  
Hearing Officer