STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA ANA UNIFIED SCHOOL DISTRICT, Employer, and COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, Petitioner.	Case No. LA-RR-1158-E Administrative Appeal PERB Order No. Ad-383 February 23, 2010

Appearances: Law Offices of Eric Bathen by Eric Bathen, Attorney, for Santa Ana Unified School District; Judith G. Belsito, District Counsel, for Communications Workers of America, AFL-CIO.

Before Dowdin Calvillo, Acting Chair; Neuwald and Wesley, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Santa Ana Unified School District (District) of an administrative determination (attached) by a Board regional attorney (RA). The Communications Workers of America, AFL-CIO (CWA) filed a request for recognition with the District pursuant to PERB Regulation 33050,[1] seeking to represent a unit of substitute teachers employed by the District. The RA granted the request for recognition.

The Board has reviewed the administrative determination and the entire record in this case in light of the District's appeal, CWA's response and the relevant law.[2] Based on this review, we find the administrative determination well-reasoned, adequately supported by the

[1] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[2] The Board denies the District's request for oral argument.

record and in accordance with applicable law. As such, we adopt the administrative determination as the decision of the Board itself consistent with the discussion below.[3]

On appeal, the District argues that the RA's determination should be overturned for the following reasons: (1) there is no practical purpose for a stand-alone unit of substitute teachers and it will interfere with the efficiency of the District's operations; (2) there is no potential benefit to substitute teachers being a part of a bargaining unit especially in light of the severe financial crisis facing the State of California; and (3) the unit of substitute teachers would be transitory, such that the District and CWA would be unable to determine who actually belongs at a given point in time, since there could be thousands of eligible substitute teachers in the District.

As to the first argument, the District contends that, if CWA succeeds in obtaining recognition as the exclusive negotiator for the substitute teachers, these employees will be harmed by having dues deducted from their already-low paychecks and, given the current economic climate, CWA will be unable to negotiate increased wages or benefits on their behalf. Thus, the District contends, the employees are being misled by CWA recruiters, while the District stands to lose valuable resources of administrative time, money, and efficiency if it is required to bargain with CWA.

The Educational Employment Relations Act (EERA)[4] guarantees all covered employees the right to select an employee organization as their representative in an appropriate bargaining

[3] The RA stated in the administrative determination that the District has not "attempted to modify the certificated unit through PERB procedures to accrete the substitute teachers into the certificated unit." We clarify that, while the District could not have filed a unit modification petition in this case pursuant to PERB Regulation 32781, the District could have sought to include the substitute teachers in the certificated unit through agreement with the Santa Ana Educators Association (SAEA).

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

unit. (EERA § 3540.) It is well established that substitute teachers are employees entitled to the protections under EERA. (*Palo Alto Unified School District, et al.* (1979) PERB Decision No. 84.) While substitute teachers may be included within a broader unit of teachers, a unit composed solely of substitute teachers may also be appropriate. (*Ibid.*) Moreover, PERB has made it clear that, even where the broader unit may well be appropriate had the matter been brought before PERB, it would not effectuate the purposes of the statute to force expansion of a unit upon an unwilling representative. (*Santa Clara Unified School District* (2007) PERB Decision No. 1911; *Long Beach Community College District* (1989) PERB Decision No. 765.)

PERB's role in this proceeding is not to evaluate the wisdom of the decision of a majority of the employees in the proposed unit to select CWA as their bargaining representative, or whether CWA will be able to negotiate favorable terms and conditions of employment on their behalf. We are charged solely with determining whether sufficient proof of support exists to certify CWA as the exclusive representative of an appropriate bargaining unit and thereby confer an obligation to meet and negotiate in good faith. (EERA § 3544 et seq.; PERB Reg. 33485.) Contrary to the District's assertions, we find that a stand-alone unit of substitutes in this case satisfies the requirements of EERA section 3545 and ensures the ability of such employees to exercise the rights guaranteed under EERA where, as here, the alternative would leave them with no representation whatsoever.[5] Furthermore, as noted by the RA, the employer's operational efficiency concerns cannot outweigh employee representation rights when employees have no other options for representation. (*Sweetwater Union High*

[5] We reject the District's argument that CWA was required to establish what SAEA would have done in the event the substitute teachers requested inclusion and representation by SAEA in the regular teachers' bargaining unit. The record is clear that SAEA has never sought to represent the substitute teachers and did not seek to intervene in this proceeding.

School District (1976) EERB[6] Decision No. 4; *Los Angeles Unified School District* (1998) PERB Decision No. 1267.)

As to the second argument, the District appears to contend that substitute teachers should not be included in any bargaining unit because of the potential for increased costs to the District arising out of having to negotiate with respect to these employees. As noted above, substitutes are covered by EERA and entitled to all the rights afforded thereby. This argument is, therefore, rejected.

Finally, the District cites no authority for the proposition that substitute employees are not entitled to representation in collective bargaining merely because the nature of their employment may be "transitory" or that the bargaining unit may encompass a large number of members. As noted above, PERB has long recognized that substitute teachers fall within the scope of EERA, and the District "would have an obligation to negotiate regardless of whether substitutes were placed in a separate unit or folded into the existing unit." (*Oakland Unified School District* (1983) PERB Decision No. 320.) Therefore, we reject the District's argument.

ORDER

The Santa Ana Unified School District is ORDERED to grant recognition to a unit of all substitute teachers employed by the District.

Acting Chair Dowdin Calvillo and Member Wesley joined in this Decision.

[6] Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA ANA UNIFIED SCHOOL DISTRICT, Employer, and COMMUNICATIONS WORKERS OF AMERICA, Petitioner.	REPRESENTATION CASE NO. LA-RR-1158-E ADMINISTRATIVE DETERMINATION (November 26, 2008)

Appearances: Law Offices of Eric Bathen, by Eric Bathen and Marcia P. Brady, Attorneys, for Santa Ana Unified School District; Communications Workers of America, AFL-CIO, by Judith G. Belsito, District Counsel.

Before Sean McKee, Regional Attorney.

PROCEDURAL HISTORY

On April 21, 2008, the Communication Workers of America AFL-CIO (CWA) filed a request for recognition petition (petition) with the Public Employment Relations Board (PERB). CWA seeks recognition as the exclusive representative of the substitute teachers employed by the Santa Ana Unified School District (District). CWA's petition was not accompanied by proof of majority support of the employees in the claimed unit[1] as required by PERB Regulation 33050(b).[2] In addition, the proof of service form attached to the petition did not list the name(s) and address(es) used for service as required by PERB Regulation 32140(a).

On April 23, 2008, PERB notified the parties that it received the petition. PERB also informed the parties that CWA and/or "PERB records indicate that no employee organization

[1] The petition declares that CWA is supported by 30 percent of the employees in the claimed unit.

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95811, and the text is available at www.perb.ca.gov.

is currently recognized or certified as the exclusive representative of any of the employees in the claimed unit." PERB directed the District to post a "Notice of EERA[3] Representation Petition along with a copy of the representation petition . . ." and to confirm that no employee organization currently represents substitute teachers employed by the District. The District was also instructed to file with PERB "a list of the names of all persons employed in the claimed unit who have worked at least 10% of the current academic year [im]mediately preceding the date the [petition] was filed with the [District.]" (Emphasis omitted.)

On April 25, 2008, CWA amended the petition. The amended petition reduced the number of employees in the claimed unit and declared that the petition was accompanied by proof of majority support. The proof of service form attached to the amended petition complied with PERB Regulation 32140.

On May 9, 2008, the District filed a notice of appearance form with PERB designating "The Law Office of Eric Bathen" as its representative. Marcia Brady, an attorney from The Law Office of Eric Bathen, confirmed that the District received the petition on April 24, 2008 and that the District posted a copy of the petition on April 29, 2008. Ms. Brady also confirmed that "there is not currently an exclusive representative for the proposed substitute teacher/faculty unit." Ms. Brady assured PERB that a list of the names of the employees in the claimed unit was forthcoming.

In the weeks following, the parties identified the names of the employees in the claimed unit. On June 5, 2008, PERB made an "initial determination" that the proof of support filed by CWA with the petition was insufficient to meet the requirements of PERB Regulation

[3] EERA stands for the Educational Employment Relations Act. EERA is codified at Government Code section 3540 et. seq.

33050(b). Pursuant to PERB Regulation 33085, CWA was granted 10 calendar days to perfect its proof of support.

Within 10 calendar days, CWA filed additional proof of support with PERB. On June 20, 2008, PERB notified the parties that, after reviewing CWA's additional proof of support, PERB made the administrative determination that the support is sufficient to meet the requirements of PERB Regulation 33050(b). The District was advised that it had 15 calendar days to file a "decision pursuant to Regulation 33190" and that since "CWA has evidenced majority support and no valid intervention has been filed, recognition must be granted unless the [District] doubts the appropriateness of the unit." (Citation omitted.)

On July 14, 2008, PERB granted the District's request for an extension of time to file its decision. On July 31, 2008, the District filed a decision refuting the appropriateness of the claimed unit. Among other reasons, the District refused to voluntarily recognize CWA because "the proposed classification of substitute teachers shares a community interest with the teachers in the District and the teachers are already represented by Santa Ana Educators Association [SAEA]."

In a letter dated September 17, 2008, CWA petitioned PERB for a Board investigation pursuant to PERB Regulation 33230. Thereupon, the above-titled case was transferred to the undersigned for further processing.

On September 30, 2008, this office scheduled a settlement conference between the parties to enable the undersigned to gather information regarding the appropriateness of the claimed unit, and to attempt settlement of the case. On October 2, 2008, CWA attorney Judith Belsito contacted the undersigned via telephone and stated that CWA was not interested in engaging in settlement negotiations with the District. Thus, the scheduled informal settlement conference was canceled.

On October 14, 2008, CWA filed a declaration of CWA Staff Representative Janine Munson. Ms. Munson's declaration provides in relevant part: "On November 29, 2007, I met with the Vice President of SAEA, Dr. David Barton, at the offices of SAEA, in Santa Ana. At this meeting I asked Dr. Barton if SAEA was interested in representing the part-time substitute teachers. He specifically stated that SAEA was not interested in representing this unit."

On October 16, 2008, after reviewing the District's July 31 decision, this office ordered the District to show cause why "CWA should not be recognized as the exclusive representative of the proposed unit of substitute teachers." The Order to Show Cause (OSC) directed the District to support factual assertions with declarations signed by witnesses with personal knowledge under the penalty of perjury. The District was ordered to file its response by no later than November 3, 2008. On October 31, 2008, PERB granted the District's request for an extension of time to file its response. On November 7, 2008, the District filed a response to the OSC and on November 10, 2008, CWA filed a reply to the District's November 7 response.

ISSUE

Whether CWA should be certified by PERB as the exclusive representative of the District's substitute teachers.

FINDINGS OF FACT

CWA is an "employee organization" within the meaning of Government Code section 3540.1(d). The District is a "public school employer" within the meaning of Government Code section 3540.1(k).

On October 8, 1984, SAEA was certified by PERB as the exclusive representative of permanent teachers (certificated unit) employed by the District. Among the positions specifically excluded from the certificated unit were "Day Substitutes." There is no record that

SAEA has ever attempted to modify the certificated unit through PERB procedures to accrete substitute teachers into the certificated unit.

On April 29, 2008, the District posted a copy of CWA's petition seeking recognition as the exclusive representative of the substitute teachers. The posting notified employees that "any other employee organization desiring to represent any of the employees in the unit described in [the petition] has the right within 15 workdays following the date of [the] notice, to file with [the District] an intervention . . . ." Neither SAEA nor any other employee organization attempted to intervene to challenge the petition with evidence of employee support of its own.[4]

POSITION OF THE PARTIES

The District

Among other PERB precedent, the District cites Sweetwater Union High School District (1976) EERB[5] Decision No. 4 and Los Angeles Unified School District (1998) PERB Decision No. 1267 and argues that the petition should be dismissed by PERB because substitute teachers share a community of interest with the certificated unit. For example, substitute teachers and permanent teachers share many of the same duties, responsibilities and qualifications. Many of the substitute teachers are retired permanent teachers or applicants for permanent teaching assignments. Thus, due to community of interest factors, PERB case law favoring bargaining units that include "all classroom teachers," and the Legislature's intent to limit the number of public sector bargaining units, "the District contends that the Substitute employees . . . should seek to align themselves with the already existing SAEA . . . ."

[4] As of the date of this Administrative Determination, no employee organization has contacted PERB and attempted to intervene in this case.

[5] Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB.)

The District and SAEA are parties to a collective bargaining agreement. Thus, according to the District, "It would be more efficient to seek an amendment of the existing collective bargaining agreement to include a new classification of covered employees . . . ." "Furthermore, SAEA is a chapter of the California Teachers Association (CTA) and as such, has more experience and knowledge relating to the rights and privileges afforded to substitute teachers under California law, including the California Education Code."

The District also doubts CWA's "level of sophistication with respect to legal aspects of meeting and negotiating, contract enforcement, and legal defense in disciplinary matters." The District notes that "The existing District Bargaining Units on the other hand, are the prototypical 'modern' public sector unions in terms of their outlook, their emphasis on the need for political access, and their reliance on education field professionals."

The District asserts that there is no reliable evidence that SAEA

> seriously considered or reviewed the issues related to inclusion of the substitute teachers. The CWA's Staff Representative's hearsay laden recounting of Dave Barton's alleged comments does not establish what SAEA's Board or membership's reaction would have been had the teachers' bargaining unit been presented with the issue of affording inclusion of the substitute teachers, many of whom are former SAEA members or will be SAEA members in the future.

The District also doubts "the legitimacy of the majority of signatures claimed to have been collected by [CWA]."

Furthermore, the District is concerned that the creation of an additional bargaining unit will hinder the District's efficiency of operation and will be unduly burdensome. The District alleges that it is experiencing declining enrollment, state budget cutbacks and major budget shortfalls. The additional costs required to negotiate with a separate bargaining unit will place an added strain on the District's finances. Moreover, the District maintains

> if CWA succeeds in obtaining recognition . . . low wage at-will employees who are already discouraged about their lack of job security and alleged inadequate compensation are going to be faced with additional paycheck cuts because they will have CWA withdrawing dues moneys out of their paychecks. CWA will fail to negotiate increased wages or benefits concessions for the substitute teachers because of the State and District budget crises which is resulting in, at the minimum, freezes of all pay levels without even cost of living adjustments for the foreseeable future, and potentially actual reductions in salaries and benefits. The employees who are being mislead by the CWA recruiters will be sorely disappointed when they find they are going to get no new concessions from the District and will instead have an additional 1.2-2.0 percent of their paychecks siphoned off to pay for the "nothing" CWA is going to get for them.

CWA

Citing Santa Clara Unified School District (2007) PERB Decision No. 1911 (Santa Clara) and Long Beach Community College District (1989) PERB Decision No. 765 (Long Beach), CWA argues that the District cannot "force a group of previously unrepresented teachers into a unit already represented by an organization not of the choosing of the employees at issue, and not seeking to accrete them into the established unit . . . ."

CONCLUSIONS OF LAW

Rebuttable Presumption

As stated in the October 16 OSC, there is a rebuttable presumption that "all classroom teachers" be contained in a single unit. (Peralta Community College District (1978) PERB Decision No. 77.) However, in numerous decisions, PERB has found appropriate a unit of certificated employees that does not include "all classroom teachers." (See Oakland Unified School District (1983) PERB Decision No. 320; Davis Joint Unified School District (1984) PERB Decision No. 474; Modesto City Schools (1985) PERB Decision No. 567; Long Beach, supra, PERB Decision No. 765; Pasadena Community College District (2001) PERB Decision No. 1098; Santa Clara, supra, PERB Decision No. 1911.)

In Long Beach, supra, PERB Decision No. 765, the Board considered the issue of how to resolve disputes over representation petitions filed by residual groups of unrepresented employees who were excluded from existing units via voluntary recognitions or consent election agreements, but would likely have been included in the unit had the issue been before the Board at that time. (Part-time faculty were not represented in the faculty unit.) The Board noted that a dilemma may arise when, sometime later, the excluded employees seek bargaining rights through a petition for a separate unit. These types of petitions are filed because there is no mechanism for being added to the existing unit if the exclusive representative of that unit chooses not to file a unit modification petition. (Santa Clara, supra, PERB Decision No. 1911.) There is no established mechanism for forcing upon an existing unit an additional group of employees the unit does not want. (Ibid.)

In Long Beach, supra, PERB Decision No. 765, the Board found that it would not effectuate the purposes of the statute to order such a forced expansion of the unit, even assuming it had the authority to order such action. The Board gave great weight to the fact that denial of the petition for a separate unit would effectively preclude the part-time faculty from exercising their statutory bargaining rights. More importantly, the Board found no authority, express or implied, for the Board to force an employee organization to represent employees against its will. (Ibid.)

At no point since 1984 has either the District or SAEA attempted to modify the certificated unit through PERB procedures to accrete the substitute teachers into the certificated unit. Similarly, there is no evidence that SAEA has ever filed a petition with PERB for a separate unit of substitute teachers. In addition, SAEA did not attempt to intervene to challenge the CWA petition with evidence of employee support of its own, despite being

given notice and fifteen work days to do so.[6] PERB does not have the authority to force SAEA to represent substitute teachers against its will. (Long Beach, supra, PERB Decision No. 765.) Thus, like in Long Beach supra, PERB Decision No. 765 and Santa Clara, supra, PERB Decision No. 1911, denial of the petition for a separate unit of substitute teachers will effectively preclude the employees from exercising their statutory bargaining rights. Therefore, based on the well-established series of PERB cases, the District's decision to deny recognition to CWA as the substitute teachers' exclusive representative—because substitute teachers belong in the certificated unit represented by SAEA—is rejected.

Efficiency of Operation

PERB must consider the effect of a proposed unit on an employer's ability to operate efficiently. (Gov. Code, § 3545(a); San Francisco Community College District (1994) PERB Decision No. 1068.) PERB balances any impact on efficiency with the "employees' right to effective representation in appropriate units." (San Diego Unified School District (1977) EERB Decision No. 8.) In balancing the impact on the efficient operations of an employer with the employees' right to effective representation in appropriate units, the Board has never found the efficiency factor to outweigh representation rights. (See Sweetwater Union High School District, supra, EERB Decision No. 4; Los Angeles Unified School District, supra, PERB Decision No. 1267.)

In Oakland Unified School District, supra, PERB Decision No. 320, the Board rejected an employer's argument that including substitutes in a general teacher unit would affect the

[6] The District cites no authority for its argument that CWA must provide PERB with evidence that SAEA "seriously considered or reviewed the issues related to inclusion of the substitute teachers" or that CWA must "establish what SAEA's Board or membership's reaction would have been had the teachers' bargaining unit been presented with the issue of affording inclusion of the substitute teachers . . . ." Consequently, these requirements will not be imposed on CWA.

efficiency of the employer's operation. The Board explained that employers "have an obligation to negotiate regardless of whether substitutes were placed in a separate units [sic] or folded into the existing unit."

In Long Beach, supra, PERB Decision No. 765, the Board rejected the employer's argument that the creation of a separate substitute teacher unit would affect the efficiency of the employer's operation. The Board explained:

> The District argues a separate unit of part-timers would damage the efficiency of the District's operations by requiring additional bargaining with yet another union and more time at the bargaining table. However, regardless of where part-timers are placed, if they exercise bargaining rights the District would have to negotiate part-time issues. Therefore, the issues of concern to part-timers will no doubt prolong bargaining whether they are included with full-timers or are placed in a separate unit.
>
> As the Board noted in Antelope Valley Community College District (1981) PERB Decision No. 168, and Pleasanton Joint School District[, Amador Valley Joint Union High School District (1981) PERB Decision No. 169] the potential loss of time which must necessarily be spent in negotiations was a burden considered by the Legislature but found not to outweigh the benefits of an overall scheme of collective bargaining.

Here, the District's attorney asserts that "The creation of an additional unit would significantly impact the efficiency of the District's operations." Attached to the District's response to PERB's October 16 OSC is a "Verification" signed under the penalty of perjury by the District's Executive Director of Human Resources Chad Hammitt. The "Verification" signed by Mr. Hammitt provides in relevant part: "I am informed and believe and on that ground allege that the matters stated in the foregoing document are true, and based on that belief, I declare, under penalty of perjury . . . that the foregoing is true and correct."

The "Verification" provided by the District is not a declaration by a witness with personal knowledge signed under penalty of perjury. Consequently, the District's factual assertion does not comply with the requirements set forth in the October 16 OSC.

Nevertheless, the substitute teachers' right to representation outweighs the impact a separate bargaining unit of substitute teachers will have on the District's operations.

Government Code section 3540 states that the declared purpose of EERA is 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, and to afford certificated employees a voice in the formulation of educational policy.

Government Code sections 3543.2(a) and 3543.5(c) requires public school employers to negotiate in good faith with exclusive representatives over wages, hours of employment and terms and conditions of employment.

A majority of the employees in the claimed unit exercised their statutory rights under the Government Code by signing support cards for CWA. The support cards clearly demonstrate the employees' desire to be represented by CWA for the purpose of meeting and negotiating on wages, hours and other terms and conditions of employment.

As previously stated, no other employee organization attempted to intervene to challenge the petition with evidence of employee support of its own despite being given notice and fifteen work days to do so. In addition, at no point since 1984 has either the District or SAEA attempted to modify the certificated unit through PERB procedures to accrete substitute teachers into the certificated unit. There is no mechanism to force SAEA to represent substitute teachers against its will. (Santa Clara, supra, PERB Decision No. 1911.)

Thus, dismissal of the petition because a separate unit of substitute teachers will impact the efficiency of the District's operations will deprive employees of their statutory right to be represented by an employee organization of their choice during a period of time where,

according to the District, "low wage at-will employees who are already discouraged about their lack of job security and alleged inadequate compensation are going to be faced with additional paycheck cuts . . . ." This result is counter to the express purposes of the Government Code and a well-established series of PERB cases. Moreover, like the employer in Long Beach, supra, PERB Decision No. 765, whether substitute teachers are represented by CWA or another employee organization, the District will have to negotiate part-time issues.[7] Accordingly, the District's argument that PERB should dismiss the petition because it will impact the efficiency of the District's operations is rejected.

The Duty to Remain Neutral

Government Code section 3543.5(d) prohibits public school employers from "encouraging employees to join any organization in preference to another." In Rocklin Teachers Professional Association, CTA/NEA (Romero) (1995) PERB Decision No. 1112, the Board held that Government Code section 3543.5(d) requires public school employers to "maintain strict neutrality in the face of organizational activity."

While the District may dispute the appropriateness of the claimed unit, it cannot refuse to recognize CWA because the District believes that another employee organization is better suited to represent substitute teachers. Thus, the District's arguments that PERB should dismiss the petition because another employee organization is better equipped to represent the claimed unit are rejected.

[7] The District's argument that "the creation of an exclusive unit to negotiate on behalf of substitute teachers in the District serves no practical purpose" is also rejected. The District fails to cite any authority where PERB dismissed a recognition petition on the grounds that the formation of a unit would serve no practical purpose.

Proof of Support

While the District contests the "legitimacy of the majority of signatures claimed to have been collected by [CWA,]" Government Code section 3544(b) and PERB Regulation 33075 grant PERB sole authority to determine the sufficiency of an employee organization's proof of support. Moreover, the District failed to present evidence to PERB in the form of declarations supporting its contention that CWA's proof of support is not "legitimate" within 20 days after the filing of the recognition petition as required by PERB Regulation 32700(g).

PROPOSED ORDER

Based on the record in this case and the discussion above, it is determined that CWA has established that the claimed unit is appropriate. CWA is hereby certified as the exclusive representative of substitute teachers employed by the District.

RIGHT OF APPEAL

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision. (Cal. Code Regs., tit. 8, sec. 32360.) To be timely filed, the original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, sec. 32135(a) and 32130; see also Government Code section 11020(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 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, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (Cal. Code Regs., tit. 8, sec. 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justifications for the request (Cal. Code Regs., tit. 8, sec. 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (Cal. Code Regs., tit. 8, sec. 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see Cal. Code Regs., tit. 8, sec. 32140 for the required contents). The document will be considered properly "served" when personally delivered, or when deposited in the mail or with a delivery service properly addressed, or when sent by facsimile transmission in accordance with the requirements of California Code of Regulations, title 8, sections 32090 and 32135(d).

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause

for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (Cal. Code Regs., tit. 8, sec. 32132).

Sean McKee
Regional Attorney