STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL TRANSIT DISTRICT, Employer, and AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES LOCAL 146, Petitioner.	SMCS Case No. 21-2-287 Case No. SA-PC-23-P PERB Decision No. 2871-P August 31, 2023

Appearances: Beeson, Tayer & Bodine by Peter McEntee, Attorney, for American Federation of State, County & Municipal Employees Local 146; Jackson Lewis by Gina Roccanova, Attorney, for Sacramento Regional Transit District.

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to a proposed decision of a hearing officer appointed by the State Mediation and Conciliation Service (SMCS). At issue is a petition for certification filed by American Federation of State, County & Municipal Employees Local 146 (AFSCME). Specifically, while AFSCME already represents two bargaining units at Sacramento Regional Transit District (Sac RTD or District)—a supervisory unit and a rank-and-file unit—the union has petitioned to represent a third unit, consisting of 13 unrepresented District Superintendents.

The parties have stipulated that the Superintendents' duties are sufficient to qualify them as "supervisors and/or managers." But the parties are at odds over the ramifications of that fact. The District claims Superintendents have no collective bargaining rights under the District's enabling statute, the Sacramento Regional Transit District Act (Sacramento RTD Act).[1] AFSCME disagrees.

SMCS appointed a hearing officer to address the parties' dispute. After the hearing officer ruled in AFSCME's favor, the District filed exceptions. In its response and cross-exceptions, AFSCME supports the hearing officer's conclusion that Superintendents have collective bargaining rights, but AFSCME also asks us to find that the hearing officer should have resolved an alternative argument AFSCME asserted: that judicial estoppel applies because the District has long recognized AFSCME as the exclusive representative of a separate supervisory unit.

We find no cause to sustain either party's exceptions. As we proceed to explain, Superintendents have collective bargaining rights under the Sacramento RTD Act, and the hearing officer reasonably declined to reach AFSCME's alternative argument. Accordingly, we direct SMCS to continue processing AFSCME's petition.[2]

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[1] The Sacramento RTD Act is codified at Public Utilities Code (PUC) section 102000 et seq. The statute's labor relations provisions are found at sections 102398-102418.

[2] There is no dispute that AFSCME submitted adequate proof of support with its petition. Moreover, the parties stipulated that if the Board determines Superintendents have collective bargaining rights, then a unit of Superintendents would be appropriate and SMCS should hold an election.

FACTUAL AND PROCEDURAL BACKGROUND

The District operates bus and light rail services in Sacramento County. It is one of more than 15 public transit districts with enabling statutes found in Divisions 10 and 11.5 of the PUC. The District recognizes AFSCME as the exclusive representative of a supervisory bargaining unit as well as an administrative and technical unit.

On January 4, 2022, AFSCME filed its petition for certification seeking to represent Superintendents. AFSCME subsequently amended the petition to remove one position that the District had reclassified from Superintendent to a Director-level position reporting to a District Vice President. As amended, the petition covers 13 positions in the following classifications:

a. Transportation Superintendent – Bus (five positions)

b. Transportation Superintendent – Light Rail (two positions)

c. Maintenance Superintendent – Bus (one position)

d. Maintenance Superintendent - Light Rail (two positions)

e. Maintenance Superintendent – Wayside (one position)

f. Materials Management Superintendent (two positions)

On October 10, 2022, the parties agreed that there was no need for an evidentiary hearing and that the hearing officer could issue a proposed decision based on a stipulated record and closing briefs. One of the parties' stipulations is that the classifications at issue "meet the federal definition of supervisors and/or managers under federal law."

On December 16, 2022, the hearing officer issued a proposed decision finding the petitioned-for Superintendent classifications have collective bargaining rights. As

noted, the hearing officer declined to reach AFSCME's alternative argument that judicial estoppel bars the District from denying the Superintendents' collective bargaining rights.

DISCUSSION

The Sacramento RTD Act directs SMCS to address representation questions at the District. (PUC, § 102403.) Since 2012, when the Legislature transferred SMCS from the Department of Industrial Relations (DIR) to PERB, the Board has had jurisdiction to resolve appeals from SMCS decisions.[3] (*San Joaquin Regional Transit District* (2019) PERB Decision No. 2650-P, p. 5 (*San Joaquin*).)

To resolve representation matters at PUC transit districts, the most important sources of law are: (1) the transit district enabling acts; (2) decisions interpreting the transit district enabling acts, which include appellate court decisions, PERB decisions issued since 2012, and DIR decisions from prior to 2012; and (3) federal private sector labor law and administrative practice to the extent they are "relevant," as indicated in PERB Regulation 93080.[4] (*San Joaquin*, *supra*, PERB Decision No. 2650-P, pp. 5-9.)

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[3] After SMCS became part of PERB, the Board adopted pre-existing regulations that DIR had promulgated on transit representation matters, without making any material changes. (*San Joaquin*, *supra*, PERB Decision No. 2650-P, p. 5.) On July 7, 2023, the Board issued a Notice of Proposed Rulemaking regarding potential updates to these regulations, but the proposed revisions are not currently in effect.

[4] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The Sacramento RTD Act is in accord, stating that "relevant" federal law and practice should guide unit determinations. (PUC, § 102403).

The parties' central dispute concerns the relevance of federal labor law and administrative practice.[5] Both parties acknowledge the settled principle that federal law and practice are generally relevant to unit determinations under the PUC transit enabling acts, except where: "(1) the question presented is governed by an explicit provision of the applicable transit district statute or (2) considerations unique to public sector labor relations require a deviation from federal law." (*San Joaquin*, *supra*, PERB Decision No. 2650-P, p. 8.) The parties further acknowledge that, pursuant to this standard, "whether federal law is relevant will depend upon the particular circumstances of each case." (*Ibid*.) However, the parties disagree as to how the above principles apply to this dispute over employees who are supervisory and/or managerial, and the parties also dispute the relevance of supervisory and managerial provisions found in California's other public sector labor relations statutes. We analyze those issues below, together with precedent from DIR, PERB, and the appellate courts.

I. Federal Law Differs from the Sacramento RTD Act in Its Language and Legislative History on Supervisory and Managerial Issues.

The NLRA, since the 1947 amendments thereto, has explicitly excluded supervisors from its definition of covered employees. (29 U.S.C. § 152(3) & (11).) The NLRA does not explicitly exclude managerial employees from the definition of covered

[5] In this decision, we refer to federal private sector labor law as the National Labor Relations Act (NLRA; 29 U.S.C. § 151 et seq.), which Congress first enacted in 1935. PERB Regulation 93080 and the Sacramento RTD Act refer to the same law as the Labor Management Relations Act (LMRA), which is the name of the law Congress enacted when it modified the NLRA in 1947. No difference is intended by these disparate references. (*San Joaquin*, *supra*, PERB Decision No. 2650-P, p. 7, fn. 8.)

employees. However, the United States Supreme Court has held that the legislative history of Congress's 1947 NLRA amendments—which added the exclusion for supervisors—shows that Congress assumed the National Labor Relations Board (NLRB) would exclude managerial employees. (*NLRB v. Bell Aerospace Co. Div. of Textron, Inc.* (1974) 416 U.S. 267, 283 (*Bell Aerospace*).)

The Sacramento RTD Act of 1971 neither contains the NLRA's explicit exclusion nor has a similar legislative history. Rather, because the Sacramento RTD Act extends the right of organization and representation to employees without restriction (PUC, § 102400), it is akin to the NLRA prior to the 1947 amendments. (See, e.g., *Packard Motor Car Co. v. NLRB* (1947) 330 U.S. 485 (*Packard*), overruled by 29 U.S.C. § 152(3) & (11), as recognized in *NLRB v. Town & Country Elec., Inc.* (1995) 516 U.S. 85, 92.) Indeed, in *Packard*, the Supreme Court found that it was for Congress, not the Court, to exempt supervisors if it wished to do so. (330 U.S. at p. 490.) Congress promptly did so later that year, in large part responding to *Packard*. (*Bell Aerospace*, *supra*, 416 U.S. at p. 279 ["The *Packard* decision was a major factor in bringing about the Taft-Hartley Act of 1947"].)

In assessing the import of the differences between federal law and a PUC transit enabling act, we do not write on a blank slate. Rather, as discussed *post* at pages 10-13, since 1993 DIR and PERB have held that federal law and practice on supervisory and managerial issues are not relevant to interpreting a transit district enabling act that lacks the NLRA's statutory language and legislative history. However, before turning to DIR and PERB precedent in transit representation matters, we round out the statutory picture by reviewing the range of California public sector

labor relations laws, their provisions on supervisory and managerial issues or lack thereof, and the controlling interpretations thereof.

II. Under Other California Public Sector Labor Relations Laws, the Absence of Supervisory or Managerial Exclusions Means Such Employees are Covered.

Interpreting the Sacramento RTD Act requires that we compare it not only to the NLRA, but also to multiple other public sector labor relations acts enacted by the California Legislature. Some of these laws contain explicit provisions about supervisors, managerial employees, or both, while others are silent, as follows.

In 1968, three years before the Legislature enacted the Sacramento RTD Act, it enacted the Meyers-Milias-Brown Act. (MMBA; Gov. Code, §§ 3500-3511.) The MMBA covers labor relations at local public agencies, including at least 20 transit agencies, though the MMBA does not cover local agencies whose PUC enabling acts include their own labor relations provisions, such as Sac RTD. The MMBA contains no exclusion for supervisors or managerial employees, and appellate courts have found that the MMBA therefore affords collective bargaining rights to supervisors and managers. We explain.

In *Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331 (*Deputy Sheriffs*), the court found that because the MMBA differs from federal law in that it "excludes only elected officials and those appointed by the Governor," it "extends organizational and representation rights to supervisory and managerial employees without regard to their position in the administrative hierarchy." (*Id*. at p. 338.) The court explained that the "California Legislature thus minimized the potential or actual conflict of interest that, as mentioned in [*Bell Aerospace*, *supra*, 416 U.S. 267] was the basis for the total exclusion of management employees that obtains

under federal law." (*Deputy Sheriffs*, *supra*, 48 Cal.App.3d at p. 338.) Two years after *Deputy Sheriffs*, the Court of Appeal reaffirmed this MMBA interpretation in *Public Employees of Riverside County, Inc. v. County of Riverside* (1977) 75 Cal.App.3d 882, 888.

The MMBA is an important landmark in our analysis for two distinct reasons. First, it is the most important example of how courts and PERB interpret a labor relations statute that does not share the NLRA's statutory language and legislative history on supervisory and managerial issues. Second, it is the main labor relations statute covering transit employees other than the PUC enabling acts, and it is therefore unsurprising that, as discussed *post*, DIR long ago harmonized its interpretation of the PUC enabling acts by adopting the MMBA approach toward supervisors and managers.

While the Legislature was silent on supervisory and managerial exclusions both when it enacted the MMBA in 1968 and the Sacramento RTD Act in 1971, by 1975 the Legislature began experimenting with other variations, showing that it was cognizant of the supervisory/managerial issues and knew how to craft various alternatives. First came the Educational Employment Relations Act (EERA; Gov. Code, § 3540 et seq.), enacted in 1975, which explicitly excludes managerial employees, but not supervisors. (Gov. Code, § 3540.1, subd. (j).)[6]

[6] EERA does restrict the unit placement of supervisors. (Gov. Code, § 3545, subd. (b)(2).)

The Ralph C. Dills Act (Dills Act; Gov. Code, § 3512 et seq.), enacted in 1977 to cover state employees, explicitly excludes supervisory and managerial employees.[7] (Gov. Code, § 3513, subd. (c).) The Judicial Council Employer-Employee Relations Act (Gov. Code, § 3524.50 et seq.), enacted in 2017, similarly excludes supervisory and managerial employees. (Gov. Code, § 3524.52. subd. (g).)

The Higher Education Employer-Employee Relations Act (Gov. Code, § 3560 et seq.), enacted in 1978, explicitly excludes managerial employees, while limiting the rights of supervisors. (Gov. Code, §§ 3562, subd. (e), 3580.)

The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA; PUC, § 99560 et seq.), enacted in 2003, explicitly states that it "shall only apply to supervisory employees of the Los Angeles County Metropolitan Transportation Authority [LACMTA]." (PUC, § 99560.3.) TEERA defines the term "Managerial employee" (PUC, § 99560.1, subd. (k)), but it does not use the term. Thus, it contains neither an explicit inclusion nor an explicit exclusion for those supervisors who also qualify as managerial employees. TEERA's legislative history sheds some light on this ambiguity, showing the Legislature's intent to cover certain supervisors who are also low-level managerial employees. Specifically, all eight of the bill analyses noted the sponsoring union's goal of assuring continued collective bargaining rights for a group of Senior Supervisors who had been

[7] The Excluded Employees Bill of Rights (EEBR) covers state employees excluded from coverage under the Dills Act, including managerial and supervisory employees. EEBR provides state supervisory employees with certain representational rights and employee organizations the right to represent their excluded members in their employment relations with the state. (Gov. Code, §§ 3530, 3531.)

union-represented but had been reclassified out of the bargaining unit to Assistant Manager positions. (See, e.g., Assem. Floor Analysis of Assem. Bill No. 199 (2003-2004 Reg. Sess.) as amended June 2, 2003, p. 2.) These analyses further show the sponsor's goal of creating an efficient means for the supervisors' union to regain its recently promoted members without forcing the union "to go to the courts," which the union deemed to be "an economic hardship." (*Ibid*.) While this history does not entirely resolve all ambiguities in TEERA's treatment of managerial employees, it indicates that LACMTA supervisors had collective bargaining rights under the PUC enabling act in effect prior to TEERA, and the Legislature acted to assure they would maintain those rights as low-level managers, without forcing their union to go to court to establish such rights.[8]

III. The District Disregarded DIR and PERB Precedent Noting that Federal Law and Practice are Irrelevant to Supervisory/Managerial Issues under the PUC Transit Enabling Acts.

As we noted in *San Joaquin*, *supra*, PERB Decision No. 2650-P, p. 7, precedent from the period before the Legislature transferred SMCS from DIR to PERB includes DIR's decision in *San Francisco Bay Area Rapid Transit District* (1993) DIR Final Decision, adopting April 2, 1993 tentative decision (*SFBART*).[9] In that case, the

[8] TEERA's coverage of supervisors and managers is further clarified by reference to the law's one explicit exclusion. Specifically, TEERA excludes "confidential" employees, defined as "any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information that contributes significantly to the development of those management positions." (PUC, § 99560.1, subds. (d) & (e).)

[9] Certain representation and unit determination decisions for PUC transit districts issued by DIR prior to 2012 are available at https://perb.ca.gov/state-

Bay Area Rapid Transit District (BART) filed a petition seeking to remove putative supervisors from a rank-and-file bargaining unit. BART cited DIR's regulation requiring SMCS to apply relevant federal law, which was identical to PERB's current Regulation 93080. (*Id*., adopting tentative decision at p. 7.) DIR rejected BART's argument, finding that federal law regarding supervisors and managers was simply not relevant. (*Id*., adopting tentative decision at pp. 12-13.) DIR explained its reasoning, first, by noting that BART's enabling act differs from federal law on a central issue: it does not explicitly exclude supervisors. (*Id.*, adopting tentative decision at p. 12.)

DIR then noted that the California Legislature has taken varied approaches to such issues, including by failing to mention supervisors and managers in the MMBA. (*SFBART*, *supra*, adopting tentative decision at p. 12.) DIR explained that the MMBA's silence means that it covers supervisors and managers, and that one reason for this difference from federal law is the fact that the California Legislature was less concerned than Congress about any "potential or actual conflict of interest." (*Id*., adopting tentative decision at p. 12 [citing *Deputy Sheriffs*, *supra*, 48 Cal.App.3d at p. 338].) DIR expounded further on these issues, again relying on *Deputy Sheriffs* to explain three reasons why there are lesser conflict of interest concerns in the public sector, warranting "more liberal treatment" of supervisors in California's public sector labor relations statutes as compared to federal law:

> "[I]n the public sector, conflict of interest between management and supervisory employees is not as clear-cut as it is in the private sector because (a) supervisorial powers are ordinarily qualified or limited by civil service and merit systems in a manner that takes supervisorial

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mediation/representation-and-unit-determination-decisions-for-puc-transit-districts.

> employees out of LMRA's definition; (b) all ranks of public employees share common goals and have a community of interest in the functioning of their common employer—the public as represented by the particular agency; and (c) the high proportion of professionals in both supervisory and rank-and-file positions 'reinforces the cohesiveness that inheres in public employment.' [Also] the private sector unions do not ordinarily accord membership to such employees—thus preserving historic Them vs. Us (!) separations between labor and management."

(*SFBART*, *supra*, adopting tentative decision at p. 13 [quoting *Deputy Sheriffs*, *supra*, 48 Cal.App.3d at p. 338, fn. 5, internal citation and italics omitted].)

Finally, noting that BART's enabling statute also did not explicitly exclude supervisors, DIR found it more like the MMBA than federal law. (*SFBART*, *supra*, adopting tentative decision at p. 13.)[10]

The fundamental principle at the core of this case has been clear since DIR issued *SFBART* in 1993. The District has not addressed or cited *SFBART*, even though it cited *San Joaquin*, *supra*, PERB Decision No. 2650-P, which summarized *SFBART*'s holding that federal law "was not relevant to the issue of whether certain purported supervisors should be removed from the bargaining unit, given that California law provides supervisors with relevant protected rights not available under federal law." (*San Joaquin*, *supra*, PERB Decision No. 2650-P, p. 8 [citing *SFBART*, *supra*, adopting tentative decision at pp. 12-13].) Thus, to the extent the District might

[10] Although DIR also noted that BART's enabling act differed from other similar acts in that it did not reference federal law (*SFBART*, *supra*, adopting tentative decision at p. 11), that difference had little import given that DIR's operative regulation, like PERB's current regulation, required DIR to apply "relevant" federal law in all representation matters under the PUC transit enabling acts.

have asked us to reverse *SFBART*, it has waived that argument by not citing the decision or making such an argument. But even were we to read the District's exceptions generously to include an implicit request to reverse *SFBART*, we would find no cause to do so for all the reasons set forth herein.

IV. Precedent After *SFBART*, While Less Directly on Point, Similarly Rejects "Slavish Adherence" to Federal Law on Supervisory/Managerial Issues.

In *Santa Clara Valley Transportation Authority* (2004) DIR Final Decision, adopting December 15, 2003 decision of Acting Director (*SCVTA I*), the Santa Clara Valley Transportation Authority (VTA) sought to exclude supervisors and managers from a mixed Supervisory-Administrative unit. VTA primarily relied on the fact that its PUC enabling act directed that relevant federal law shall apply. DIR considered two potential counterarguments: (1) that federal law regarding supervisors and managers was not relevant; and (2) that there was no need to decide if federal law regarding supervisors and managers was relevant, because a separate provision of the enabling act required VTA to recognize bargaining units as they had existed under the MMBA, before VTA took over all operations from Santa Clara County. DIR sustained the second counterargument, thereby largely mooting the first. (*Id*. at p. 5.)

VTA sought a writ against DIR, which the superior court granted. On appeal from this writ, the Court of Appeal recounted that the superior court had ruled that "DIR acted in excess of its jurisdiction by failing to apply relevant federal law." (*Santa Clara Valley Transportation Authority v. Rea* (2006) 140 Cal.App.4th 1303, 1311 (*SCVTA II*).) The Court of Appeal reversed, endorsing DIR's legal analysis. (*Id*. at p. 1313.) *SCVTA II* thus mirrored *SCVTA I* in declining to speculate about the collective bargaining rights of any supervisors or managers who had not been

previously represented as county employees. However, *SCVTA II* firmly rejected VTA's position that federal law is “always relevant to questions of representation at VTA,” labelling that position “a mistake.” (*SCVTA II*, *supra*, at p. 1319.) Analogizing to a Labor Code provision requiring the Agricultural Labor Relations Board (ALRB) to follow “applicable” federal precedent, *SCVTA II* noted that the ALRB must follow “only those federal precedents which are relevant to the particular problems of labor relations on the California agricultural scene.” (*Ibid*. [quoting *ALRB v. Superior Court* (1976) 16 Cal.3d 392, 413].) Accordingly, *SCVTA II* warned that the requirement to follow “relevant” federal law “does not demand slavish adherence” to it. (*SCVTA II*, *supra*, 140 Cal.App.4th at p. 1320.)[11]

V. Past Practice Further Confirms that Federal Law and Practice on Supervisory and Managerial Issues are Not Relevant Here.

We affirm the hearing officer's decision not only based on the above-discussed statutory language, legislative history, precedent, and differing policy concerns in the private and public sectors, but also based on decades of practice at Sac RTD and other California transit districts, including BART, VTA, and LACMTA, as noted *ante*. Indeed, the District fails to grapple with the destabilizing impacts that would flow were

[11] The lengthy history of *SCTVA I* and *SCVTA II* illustrates a point that arose in TEERA's legislative history: a law's silence on supervisory or managerial rights can lead to time-consuming, expensive litigation. As discussed *ante* at pages 9-10, TEERA's legislative history indicates an intent to minimize litigation burdens by moving dispute resolution to the less costly PERB process. Moreover, during this legislative history, the Legislature was informed that LACMTA supervisors had long held collective bargaining rights. (See *ante* at pages 9-10.) Accordingly, TEERA's enactment does not suggest that LACMTA's enabling act followed federal law on supervisory and managerial issues before 2003 (when it was silent on such issues). Indeed, Sac RTD has made no such argument.

we to reverse course and find that federal law and practice necessarily govern whether transit district supervisors and managers have collective bargaining rights. Thus, while we reaffirm that federal law and practice were not relevant even as of 1993, at this point they are not merely irrelevant; they are antithetical to public sector transit labor relations law in California.

While many supervisory and managerial transit district units in California would be destabilized were we to reverse *SFBART*, we need look no further than the District to find one such unit: a supervisory unit that AFSCME exclusively represents. AFSCME points out that Sac RTD has in the past refrained from arguing that federal law was relevant, or otherwise challenging supervisors' collective bargaining rights, including when the District entered into election agreements for the supervisory unit and when it recognized AFSCME as the unit's bargaining agent. This past practice further demonstrates that federal law and practice are not relevant.[12]

VI. The Issues in Dispute Here Are Narrow in Scope.

The above conclusions are sufficient for us to affirm the hearing officer's conclusion that the District's Superintendents have collective bargaining rights under the Sacramento RTD Act. We note in passing that while the parties stipulated that the District's Superintendents "meet the federal definition of supervisors and/or managers under federal law" (emphasis supplied), the parties did not specify whether the Superintendents' duties make them supervisors, managerial employees, or both. The

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[12] The parties' past practice also undergirds AFSCME's alternative argument—that estoppel bars the District from asserting that federal law and practice are relevant. However, like the hearing officer, we find no need to reach this alternative argument.

job descriptions and organizational charts in the record make it more likely that the Superintendents are supervisors rather than managerial employees. (See, e.g., *Santa Barbara Community College District* (2011) PERB Decision No. 2212, adopting proposed decision at p. 18 [management employees must have both "discretionary authority to develop or modify institutional goals and priorities" and "authority to implement programs through the exercise of discretion"].) However, we make no such finding, first, because we put limited reliance on written job descriptions unless they comport to actual job duties (*id*., adopting proposed decision at p. 18 & p. 25, fn. 10), and we do not know if that is true here since the parties opted to forego witness testimony.

Nor is there cause to remand this case to the hearing officer to create a more complete record, as the outcome would be the same whether the District's Superintendents are supervisors or managerial employees. Indeed, even assuming for the sake of argument that the Superintendents' duties are sufficient to make them managerial employees, there is no doubt that they are civil service employees who are low enough in the hierarchy that they fall well within the policy rationales described *ante* at page 11, which constitute supplementary bases for the reasoning in *SFBART*, *supra*, adopting tentative decision at p. 13. And as discussed at length above, the Sacramento RTD Act's language and legislative history are closer to the MMBA than to the NLRA or to the various California public sector labor relations statutes containing explicit language on supervisors, managerial employees, or both.

Notably, the narrow issues in dispute here do not require us to determine if the Sacramento RTD Act precisely mirrors the MMBA in covering all managerial

employees other than elected officials and gubernatorial appointees. Indeed, while AFSCME specifically amended its petition to exclude a position that the District had reclassified to a Director-level position, we express no opinion as to the rights of District employees at the Director level, Vice President level, or higher.

ORDER

Based on the foregoing and on the entire record in this case, the hearing officer's decision that the petitioned-for Superintendents have collective bargaining rights is AFFIRMED. This matter is REMANDED to the State Mediation and Conciliation Service for further processing consistent with this decision.

Chair Banks and Member Paulson joined in this Decision.