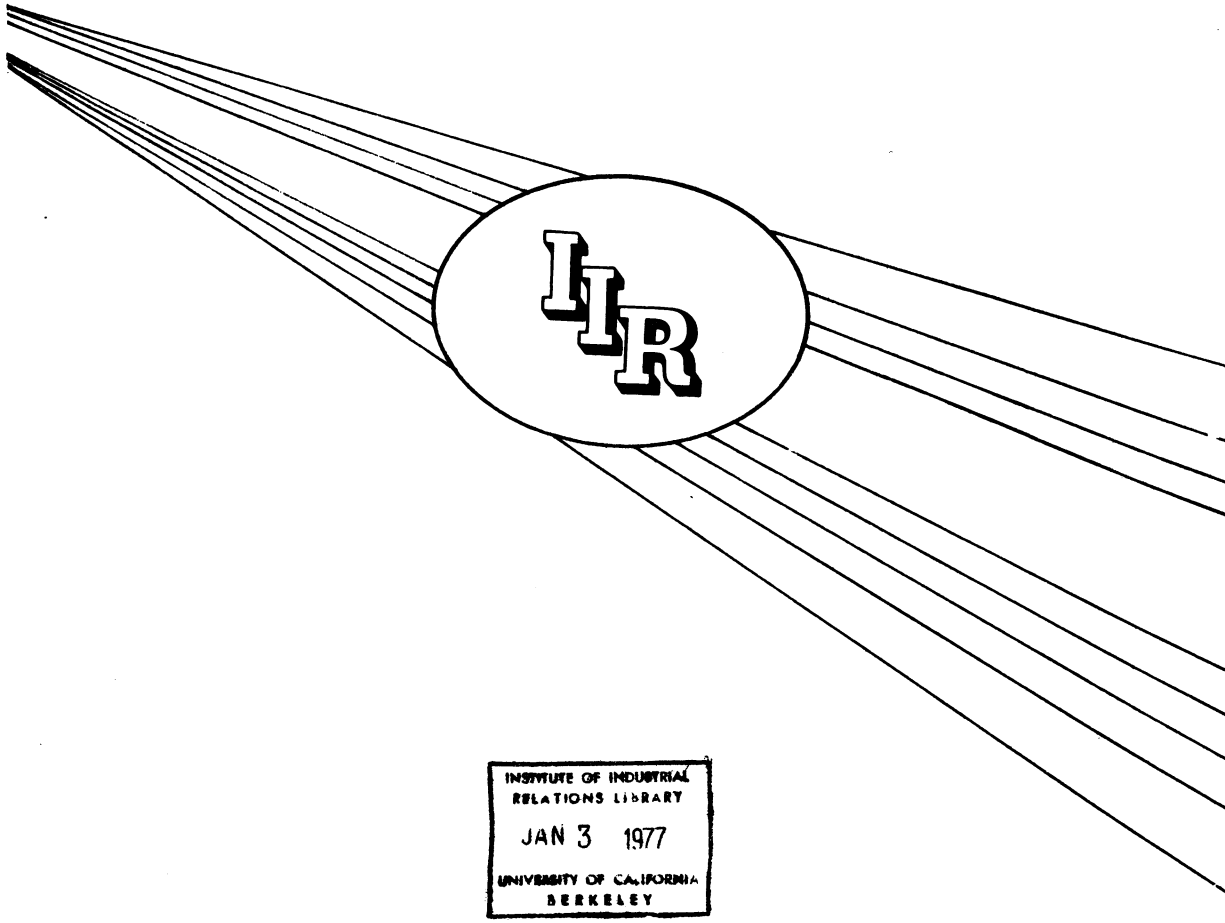
UNION RECOGNITION UNDER SB 160

(Training Manual)

THE RODDA ACT



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UNION RECOGNITION UNDER SB 160 -- THE RODDA ACT

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FOREWARD

The Institute of Industrial Relations is happy to present this, the fourth in a series of training packages completed under the terms of a contract between the State of California and the University of California, Los Angeles. With funds provided to the State by the Federal Government, the State asked the Institutes at UCLA and Berkeley to assist in the training of state and local public managers and employees in the conduct of labor relations. A major portion of our role is to prepare and provide training materials.

A thorough understanding of the union recognition process established for California educational employees under the Rodda Act (SB 160) is essential to effective implementation of this legislation by management, the employee organization, and the individual employee. All concerned must know the provisions of the bill, the philosophy of unit determination and specific criteria used to determine public sector representation units. Moreover, since the Educational Employee Relations Board will not become operative until July 1, 1976, it is critical that all concerned be familiar with longstanding precendent set by the NLRB in the private sector and emerging public sector standards.

It is our hope that this manual will be useful for practicioners who wish to comply with the intent of the law.

June, 1976

Frederic Meyers
Acting Director

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AN OVERVIEW

The materials included in this manual were selected for public sector managers and employee representatives who wish to increase their understanding of the recognition process under the Rodda Act. The materials were chosen to present a comprehensive picture of the steps that are a part of the union recognition process from the time that employees begin to think about organizing, to final certification of an exclusive bargaining agent.

In the section covering reasons why employees join unions, we have included a checklist to evaluate a district's current employee relations program. From this checklist both management and labor representatives should be able to determine the strengths and weaknesses of a district's employee relations program, and, therefore, identify some of the issues that may be raised during an organizing campaign.

Since the Educational Employee Relations Board is not empowered to hear unfair labor practice charges until July 1, 1976, we have explored private sector precedent to: (1) help managers identify proper activities and, (2) help unions monitor managements' actions.

Of equal interest to both labor and management are criteria for determining the collective bargaining unit. Rodda Act language referring to "community of interest", "effectiveness of operation", and definitions of "Management", "Supervisory", and "Confidential" personnel are similar to language used in legislation governing the private and federal sectors. We have, therefore, summarized precedents for unit determination in these sectors.

Finally we have included the petition, notice and election forms used by the National Labor Relations Board to acquaint the parties with procedures they might expect the Educational Employee Relations Board to establish. An extensive annotated bibliography and glossary of collective bargaining terms adapted to the Rodda Act are included to assist in training efforts.

In short, this manual focuses on the current union recognition issues faced by management and labor representatives in the California schools.

I would like to acknowledge the significant contributions of: Larry Curtis of Musick, Peeler and Garrett; Bruce Julian, of Julian and Associates; Ken Simon of Hill, Farrer and Burrill in the preparation of this manual. I am also indebted to Paul Prasow and Reginald H. Alleyne, Jr. for the use of their material.

June, 1976

John A. Spitz

A

TAB A

UNDERSTANDING EMPLOYEE MOTIVATORS TO SEEK UNIONISM

UNDERSTANDING EMPLOYEE MOTIVATORS TO SEEK UNIONISM

Employees become interested in unions for many different reasons, which fall generally into three categories:

1. What employees want from their jobs;
2. What employees don't get from their jobs; and
3. The political and economic influence of unionism.

WHAT EMPLOYEES WANT FROM THEIR JOBS

What do employees, in general, want from their jobs? The answer is both simple and complex. Employees want all they can get. Fundamentally, this means that each and every employee wants satisfaction from all aspects of his daily work. If an employee feels that his basic job needs are not being satisfied, then he begins looking for a better way toward greater job satisfaction.

Employees have personal needs and they want to have their personal needs met on the job. Employees want and appreciate a "pat on the back" from someone in the ranks of management. More than ever, an employee want to be recognized with dignity, courtesy and respect. Everyone wants to feel important. Employees want to have their work appreciated, regardless of their length of service, skill or ability. Most employees want to have the opportunity to advance, to be promoted, to climb up to the next step on the district ladder. Lack of opportunity for advancement is frequently a reason for job dissatisfaction.

There is a personal need to "participate" in district operations. This does not mean necessarily being a member of management. Rather, it is desired to have one's opinion requested by a supervisor or a member of top management. Employees want to be asked how they feel, what the problems are, what can be done to improve the overall district and make it a better place to work for everyone. Employees want to "help create" and be a part of their own creation.

WHAT EMPLOYEES DON'T GET FROM THEIR JOBS

Specifically, in organizing campaigns employees have shown interest in union promises for the following reasons:

1. Unfair and harsh treatment by immediate supervisors -- employees believed they could get even with management for real or imaginary wrongs;

2. Little, if any, personal recognition -- employees believed they could at last get forced recognition from the district;

3. Lack of fair and firm discipline;

4. Fear of job security -- employees felt they would have greater safety and job security in numbers;

5. Failure of management to exercise confident leadership;

6. "Open Door" complaint procedure that didn't open;

7. Failure of management to help employees identify themselves with the district -- employees believed they would have the opportunity to "participate" in a personal need satisfaction through union membership;

8. Favoritism;

9. Lack of or inadequate employee benefits;

10. Substandard compensation;

11. Failure to put company personnel policies and employee benefits in writing;

12. Lack of recognition for length of service on the job;

13. Failure to make clear to employees the benefits and advantages of working for the district;

14. Employees believed that the union organization could relieve their feelings of frustration and boredom by giving them a chance to achieve prestige and social recognition.

MANAGEMENT "MISTAKES"

Management "mistakes" is often said to be one of several possible sparks that ignited an employee's interest in a union.

Management doesn't always emphasize supervisory and employee morale as important to the district. Even where such policy is put in writing, the policy is not always administered and supported by all levels of supervision within a district. And even when this policy has been communicated to all levels of supervision, some supervisors do a poor job of carrying it out and administering it because they have not been effectively trained in the art of human relations on the job.

But in addition, it has been found that the employee interest in unions is sometimes tied to a district's "bad image" as observed and felt by the employees.

A district's image as seen and felt by the rank and file is made up of employees needs and satisfactions -- economic, social and personal.

If most of these needs are satisfied on a regular basis, the district has a good image -- an asset to the employer. If, on the other hand, the employee's needs are not satisfied on a regular basis, he will become frustrated. A poor district image is a cause for employee interest in a union.

UNION PROMISES

Frequently, during union organizing drives, union organizers have convincingly sparked employee interest in unionism by skillful promising of many things:

1. The promise to improve wages, employee benefits, fewer hours of work and better working conditions.
2. The promise of better job security and more stable employment;
3. The promise of equal and fair treatment and job protection;
4. The promise to handle complaints and grievances by policing their negotiated labor agreement;
5. The promise of giving the employees a chance to participate in management policies and decision.

Employees listened to these union promises with interest because of the following reasons:

1. Employees felt they could at last get recognition from the district;
2. Employees believed they could get even with management for real or imaginary wrongs;
3. Employees believed they would have the opportunity to "participate" and achieve personal need satisfaction through union membership;
4. Employees believed they would have the chance to be recognized as important so they could achieve prestige and social recognition.
5. Employees felt they would have greater safety and job security in numbers;
6. Employees felt that the union organization could relieve their feelings of frustration and boredom.

In addition the outcome of any union campaign and secret ballot election will depend in large measure on the following factors:

1. The experience of the employee while working for the employer;
2. The employee's degree of closeness to and respect for his immediate supervisor;
3. The influence and working experience of the employee's immediate family;
4. The employee's previous working experience for other employers;
5. Social pressures placed on the employee by his friends and co-workers;

6. The degree of the employee's satisfaction with having his job security and other economic needs met by the employer;

7. The employee's personal respect or disrespect for the employer;

8. The strategy and tactics used by the organizing union during the campaign preceding the secret ballot election;

9. The content, substance and techniques of communications used by the employer during the campaign immediately preceding the representation election.

Employee Relations Policy and Practice Review

The answers to the following questions will provide district management or a union organizer with helpful information regarding fifteen areas of a district's Employee Relations Program. The data will allow you to evaluate the positive and negative aspects of a current employee relations program in an organized fashion. Management can expect many of the negative aspects to be used as organizing issues and negotiation demands by a union.

Your analysis should consider separately certificated and classified employees.

Top Management Attitude Toward Morale

1. Does top management look upon supervisory and employee morale as equally important to district's success as program and budget preparation?

2. Does your district have a formal written policy statement setting forth the importance of good supervisory and employee relations and high morale to overall district success?

3. Does top management insist that this policy be administered and supported by all levels of supervision within the district?

4. Has top management communicated its supervisory and employee morale policy to all levels of supervision?

5. Have all supervisors in this district participated in a planned employee relations program or a refresher course in employee relations during the past 12 months?

6. Are supervisory and employee relations policies and practices under the direction of a competent executive?

7. Does this executive have sufficient qualified people available to assist him?

8. Does this executive have enough backing and authority to perform his job well?

9. Does this executive report directly to a top district executive?

10. Has top management set up effective channels of communication to keep it informed on the present level of employee morale?

11. Has top management set up effective channels of communication to keep informed about supervisory performance in administering employee personnel policies fairly, firmly, uniformly and without discrimination?

12. Does top management make every effort to revise employee and supervisor personnel policies in order to keep supervisory and employee relations activities in line with changing standards, conditions and laws related to personnel?

Employee and Supervisory Attitudes

1. Does management know what employees and supervisors really think about the district, their jobs, their working conditions and their pay?

2. Are the present attitudes of employees and supervisors friendly, loyal and cooperative toward the district?

3. Do you think employees have a feeling of "closeness" and "belonging" to the district?

4. Are you aware of any "hostile" attitudes presently existing between employees and supervisors?

5. What is the percentage of labor turnover in the district for the most recent ending year? Year_____ Percent_____

6. Does this percent of labor turnover compare favorably with other districts in the community?

7. Does management know the real reason for voluntary quits?

8. What percentage of voluntary quits are directly related to poor supervision? _____%

9. What percentage of voluntary quits are directly related to low pay? _____%

10. What percentage of voluntary quits are directly related to poor working conditions? _____%

11. What percentage of voluntary quits are directly related to feelings of poor job security? _____%

12. What is the percentage of absenteeism for the most recent ending year? _____%

13. Has the district made any recent study of the level of supervisory and employee morale?

14. Does the district believe in and sponsor periodic confidential employee and supervisory opinion surveys?

15. Does the district use an outside professional consulting agency to conduct and analyze survey results?

16. Are all supervisors well informed in advance on plans for conducting a survey so that their opinions can be considered?

17. Are specific objectives established before the survey is conducted?

18. Do the employee and supervisory questionnaires contain simple and unbiased questions?

19. Are employees and supervisors guaranteed that their dignity is protected while participating in the survey program?

20. Does any supervisor or management representative ever see the questionnaire once it has been completed?

21. Do employees know the general results of the survey once it has been tabulated and analyzed?

22. Does an independent firm tabulate, analyze and make recommendations to the district on the survey results?

23. Does the district take action and try to correct weak areas brought out by the opinion survey?

24. Do the employees receive credit for some of the improvements that are being made as a result of the survey?

Personnel Policies

1. Does a personnel policy manual exist?

2. Are all personnel policies in writing?

3. Are personnel policies reviewed periodically and kept up-to-date?

4. Are the personnel policies fair?

5. Are the personnel policies in line with standard practices within the contingent working community?

6. Do you feel that the personnel policies are being administered consistently and fairly by all levels of supervision?

7. Do you feel employees and supervisors understand the present personnel policies of the district?

Personnel Selection and Placement

1. Are you satisfied with the present sources for recruiting new employees and supervisors?

2. Do you feel these sources are providing the highest caliber of applicants possible at the present time?

3. Do you feel that the present employment application reasonably meets legitimate personnel needs for background information?

4. Do the present personnel forms meet the requirements of Title VII, Civil Rights?

5. Does the district require a preemployment interview of all job applicants once they have completed their employment application?

6. Does the district have a competent personnel director or top executive to conduct the preemployment interview?

7. Have the supervisors, personnel director or top personnel executives been trained on the type of preemployment questions they may ask job applicants within the limitations of Title VII, Civil Rights?

8. Does the district carefully screen the previous employment history and background of all job applicants?

9. Does the district send out requests for applicant reference checks in writing?

10. Does the district conduct a telephone reference check with previous employers of all job applicants?

11. Does the district use properly validated aptitude and achievement psychological tests?

12. Does the district require a physical examination by a medical doctor on each job applicant before he is hired?

13. Does the district have a formal probationary or tryout period for each job applicant?

14. Is the probationary period spelled out in writing and known to the job applicant?

15. Are there adequate and up-to-date job descriptions on all supervisory and employee jobs for the purpose of assisting in selection and placement of personnel?

16. Does the district have a written policy statement on Equal Employment Opportunities and Fair Employment Practices?

17. Has this policy statement been communicated to all supervisory and employee personnel?

18. When job openings occur in the district, is first and full consideration given to present employees and supervisors who may be transferred or promoted?

19. Does the district have a continuing program to train anyone who conducts employment interviews for the purpose of keeping them up-to-date on new developments in the field of Title VII, Civil Rights?

20. Does the district provide for any public relations or community relations programs or activities which are designed to better the district's reputation as a "good place to work"?

Personnel Induction, Orientation, and Training

1. Does the district provide a formal policy of personnel orientation and induction so that the new employee and supervisor is properly introduced to his job, his fellow workers and the district?

2. Does the personnel director or top employment officer participate in the induction and orientation procedure?

3. Does the new employee's immediate supervisor actively assist in employee induction and orientation?

4. Does the district furnish each supervisor with a checklist on what he is to cover with each new employee?

5. Is the personnel induction and orientation program systematically scheduled during the first weeks of employment for the new employee?

6. Is the responsibility for employee induction and orientation program properly and systematically divided between the personnel department and the supervisor so that each understand which functions they are to perform with the new employee?

Wages

1. Does the district have a formal job evaluation program?

2. Have all jobs been evaluated on the basis of the actual requirements of the jobs such as education, experience, physical demands, responsibility, working conditions, hazards, and mental or visual demands?

3. Are the job evaluations up to date?

4. Do you feel that present base salary and hourly rates provide fair differentials between jobs based upon skill, experience, responsibility, degree of difficulty, effort and working conditions?

5. Do you know of any wage rate inequities in the present wage and salary program?

6. If so, have any steps been taken to eliminate these inequities?

7. Is the present wage and salary program administered effectively so that employees are being paid their proper rate within their classifications in line with established rules for starting rates, transfer rates, and performance?

8. Have the rates for salaried employees been recently examined to be sure that they also reflect the responsibility and requirements of the particular salaried job?

9. Do you feel that the present salary rates provide for financial recognition of differences in the individual's effort and performance?

10. Do you know how the district's wages and salaries compare with those paid for similar work at other districts in your area and industry?

11. Does the district review the progress of probationary employees before they are considered "regular" employees and receive automatic pay increases?

12. Has the district taken adequate steps to be sure that all federal and state minimum wage and overtime requirements are understood and followed by those responsible in the payroll department and in supervision?

13. Does the district pay overtime compensation on hours worked other than after 40 hours in a workweek?

14. Does the district provide shift premium pay?

15. Does the district give call-in pay?

16. Do the above premium pay practices compare favorably with other districts in your industry and area?

17. Generally speaking, do you feel that each employee in the district understands his method of payment and how his pay is computed?

18. Does the district give across-the-board increases to employees?

19. If so, when was the last increase given and the amount?

20. Are you aware of any present justifiable "gripes" on wages and salaries by employees or supervisors?

21. Are you aware of any organizations in your community which are paying employees higher rates of pay?

Seniority

1. Does the district have a specific, written policy on seniority covering all employees?

2. Does the present seniority policy give equal consideration to skill and ability as well as length of service?

3. When skill and ability are equal, is length of service the determining factor?

4. Are the seniority lists periodically reviewed to be sure they are accurate and up-to-date?

5. Does the written seniority policy show how seniority is acquired, accumulated, retained and lost?

6. Does the seniority policy clearly spell out how seniority is retained and/or accumulated in the following instances:

   Layoffs?
   Illness?
   Accidents?
   Military leave of absence?
   Personal leave of absence?
   Promotion from rank and file
   to a supervisory position?

7. Does the present personnel policy clearly spell out how seniority will work in the following situations:

   Probationary periods?
   Transfers?
   Layoffs?
   Recalls?
   Promotions and demotions?

8. Does the present seniority policy provide management with the right to exempt certain specially qualified employees from the seniority provisions in times of slack operations resulting in substantial reduction of the work force?

9. Does the seniority policy protect the seniority rights of supervisors?

10. Have all supervisors been thoroughly trained in the proper operation of the seniority system?

11. Do you feel that the employees clearly understand how the seniority system works?

12. Do you believe that the present seniority system is being fairly and consistently administered by supervisors?

13. Does the district use any type of merit rating or employee evaluation techniques which periodically evaluate the skill and ability of employees to make certain that accurate information is available for seniority purposes?

14. Is length of service recognized by service awards?

15. Are service award pins or other recognition given at a special ceremony or dinner attended by employees and top management?

16. Is the service award program up-to-date so that all employees have received the latest award coming to them?

17. Is consideration to seniority given in determining eligibility for other employee rights and privileges such as choice for vacation time and parking lot areas?

Employee Benefits

1. Does the district provide employee benefits and services to the fullest extent its financial position will allow?

2. Are the particular needs of employees carefully considered before improvements are made to the employee benefit program?

3. Is serious consideration given to suggestions and recommendations made by employees and supervisors regarding desired changes in the present benefit program?

4. Is the benefit program established well enough to prevent abuses of various plans so that they will work to the fullest advantage of everyone?

5. Does the district take periodic communication steps to help employees understand the value of their benefits in terms of economic security and dollar cost to the district per year?

6. Has the district ever prepared a breakdown on the average dollar value of each benefit and service to the employees on a monthly or pay period basis?

7. Does the district publish an explanation of all employee benefits and services in a handbook form for employees and their families?

8. How do the present benefits compare with those in other districts?

9. Does the district provide any district-wide social activities such as annual dinner meetings or yearly picnics for all employees and their families?

10. Does the district provide any form of recreation program such as bowling teams, golf teams, etc., where employees have the opportunity to participate?

11. Does the district provide group life insurance?

12. What is the amount of coverage?

13. What percent of premium does the district pay?

14. Does the district provide health and accident insurance?

15. What percent of premium does the district pay?

16. Does the district provide hospitalization coverage?

17. Does the district provide surgical coverage?

18. Does the district provide major medical coverage?

19. Does the hospitalization, surgical and major medical plan cover both the employee and family?

20. What percent of premium does the district pay toward the medical insurance premium?

21. Does the district have a paid sick leave plan?

22. What is the maximum number of days paid under the plan?

23. Is the plan in writing?

24. Can sick leave days be accumulated from year to year?

25. Does the district have a pension plan for employees?

26. Is there a Credit Union?

27. How many paid holidays are observed?

28. What is the paid vacation policy?

Working Conditions

1. Does the district have the reputation in the community of being a safe, orderly, and attractive place to work?

2. Are supervisory and employee work areas made as clean, pleasant and attractive as possible?

3. Has the district made every effort to control conditions contributing to unusual heat, cold, noise, dust, and odor?

4. Do district work areas provide sufficient lighting and ventilation?

5. Does the district have any particular work areas which are considered overly crowded or hazardous for employees?

6. Does the district provide supervisors and employees with the following facilities:

   Water fountains?
   A place to eat meals?
   Vending machines?
   Clean rest rooms?
   Adequate parking facilities?
   Lockers or other space for clothes and personal belongings?

Safety

1. Do you consider the district's first aid facilities, equipment and personnel adequate to meet the needs of all employees?

2. Does the district have a safety program which is started immediately on the employment of all new employees?

3. Does the district give solid support to the safety program?

4. Does the district insist that all supervisors support and assist in the safety program?

5. Do you think the present supervisors accept safety as equally important in their work as cost control and program quality?

6. Does the district hold supervisors responsible for the safety records of their employees?

7. Does the district keep adequate safety records on all on-the-job accidents?

8. Does the district conduct a continuing safety program by using such techniques as employee meetings, lectures, posters and safety inspection of facilities and equipment?

9. Does the district have a systematic means of checking all operations to eliminate safety hazards?

10. Does the district have safety rules which are properly enforced by supervisors?

11. Does the district enforce safety rules on the use of safety equipment such as protective clothing, safety shoes, safety glasses and hard hats?

Job Security

1. Do you feel the district is meeting the needs of employees toward job security?

2. Does the district have a good record of providing steady work for most employees?

3. Does the district have a definite written plan for layoffs and the recall of employees?

4. Does the district make every effort to give advance notice of unavoidable layoffs to employees with an explanation or reason for the layoff?

5. Are probationary employees laid off first?

6. In a layoff, can the employees who have been with the district a long time drop back to a lower classified job rather than be laid off?

7. Has the district considered reducing the number of hours in the workweek as an alternative to layoffs?

8. Does the district have a written personnel policy on employee-supervisory transfers with the organization?

9. In a case of layoff necessity, are older employees given an opportunity to transfer to other jobs in which they are qualified to perform?

10. Do supervisors or the personnel office conduct an exit interview with each employee at the time of layoff?

11. Is the employee again given the reason for the layoff?

12. Is the employee given an explanation of what benefits will be continued under the district's benefit program?

13. Is the employee given an explanation about his unemployment compensation privileges?

14. Are employee promotion policies administered fairly and consistently?

15. Are promotion policies tied-in with a well-defined job description program giving information on qualifications?

16. Are employees given information concerning their opportunities for advancements in the district?

17. Does the district try to help employees develop their potential for higher skilled jobs by providing additional training and education?

Complaint and Grievance Procedure

1. Does the district have a written, systematic, step-by-step method for handling employee complaints and grievances?

2. Has the district publicized a complaint or grievance procedure so that all employees are familiar with it?

3. Are the employees encouraged by top management and supervisors to get their complaints out into the open?

4. Is the grievance procedure spelled out in an employee's handbook?

5. Does the district make every effort to settle employee complaints and grievances promptly?

6. Have supervisors been carefully trained in handling employee grievances?

7. Does the grievance procedure provide for time limits on each step toward an orderly settlement?

8. Is every effort made to settle grievances in the first step by the immediate supervisor?

9. If a grievance is not settled in the first step, is the grievance put in writing and answered in writing?

10. Is the aggrieved employee kept informed on the status of his complaint in the grievance procedure?

11. Does top management and the supervisors meet periodically to review the overall working environment for the purpose of looking at working conditions and personnel policies that need correction or revision prior to their becoming the subject of a grievance?

12. Are you aware of any old, unsolved grievances of any employee at the present time?

13. Does the district give supervisors immediate information covering changes in company policies, arbitration decisions and government rulings that may affect the future handling of grievances?

Company Rules and Discipline

1. Are the district rules on employee conduct in writing?

2. Do all of the district rules pertaining to employee conduct appear in an employee handbook?

3. Are the employees aware of the type of disciplinary action that can take place when the rules are violated?

4. Has management communicated on the bulletin board or in the employee handbook the district's disciplinary procedure that is followed in case of rules infractions?

5. Do you feel that your district rules and disciplinary procedure are handled by supervisors on an impartial basis with careful consideration to the merits of each case?

6. Does the disciplinary procedure provide for written warnings or written reprimands where disciplinary action is taken?

7. Does the employee receive a copy of a written warning or written reprimand?

8. Does management keep a copy of a written warning in the employee's personnel file?

9. Is the written warning dated and signed by both the employee and the immediate supervisor?

10. Have supervisors been thoroughly instructed on how to interpret and enforce present district rules?

11. Do supervisors correct and discipline employees in private?

12. Do the district rules and disciplinary policy provide that after a period of time previous written warnings on file will become void, giving the employee a clean slate for the future?

Supervision

1. Does the district have a practical, workable procedure for handling supervisors' program or personal problems promptly?

2. Does the district's compensation plan for supervisors provide for proper pay differentials above those they supervise?

3. Does the district give credit and formal recognition to supervisors for their good performance?

4. Does management publicize special recognition for supervisors in district publications or in community newspapers?

5. Are the supervisors given the opportunity to help plan future district personnel policy by participating in management meetings?

6. Does the district have regular staff meetings with supervision at all levels?

7. Does the district provide supervisors with management bulletins and newsletters?

8. Does the district make every effort to let the supervisors give district information and future plans to employees?

9. Do you feel that your present relationship between top management and front-line supervisors is positive?

10. Does management give careful consideration to the suggestions, criticisms and opinions of supervisors?

11. Have the supervisors been issued an up-to-date personnel policy manual?

12. When the district selects new supervisors, does management give careful consideration to the candidate's ability and capacity to be a leader?

13. Does the district insist that each supervisor treat his employees as individuals and with courtesy and respect?

14. Do present employees feel free to bring their problems and complaints to their immediate supervisor's attention?

15. Are supervisors trained well enough to administer district personnel and production policies fairly?

16. Have supervisors been properly trained to assign work in a fair and equal manner?

17. Do you feel that the supervisors give their employees credit and a special "pat on the back" when it is due?

18. Do you feel that the supervisors try to notify employees in advance about changes that will affect them and their work schedules?

19. Do you feel that the supervisors make every effort to encourage employees to come up with ideas and suggestions on how to make the district a better place to work?

20. Does the district provide a personnel policy of periodic supervisory counseling with each employee for the purpose of pointing out the employee's progress as well as areas for improvement?

21. Are you aware of any supervisory shouting and "bawling out" employees in front of others?

22. Are you aware of any complaints or causes of unhappiness and dissatisfaction within the supervisory group which has not been looked into or corrected?

ADDITIONAL MANAGEMENT CONSIDERATIONS

Employee and Supervisory Communications

1. Does the district have a written personnel policy which supports and insists upon good employee and supervisory communications?

2. Is the communications program based upon sincerity, frankness and honesty?

3. Is everyone in your organization aware of this communications policy?

4. Does the district have any chief executive responsible for the overall administration of employee and supervisory communications?

5. Has the communications program been reviewed recently to determine its effectiveness in providing communications upward and downward?

6. Do members of top management make regular tours of the district and office facilities?

7. Are the supervisors given information about the district's plans and past progress before this information hits the "grapevine"?

8. Are the supervisors given the "why" and "reason" of information passed to them so that they can discuss the communication subject intelligently and answer any questions raised by an employee?

9. Do the supervisors meet regularly with their employees for informal discussions concerning departmental problems or district plans?

10. Are supervisors given district information bulletins before they are placed on the bulletin boards?

Types of Information Communicated To Employees

1. Does the district try to find out the kind of information that employees want to know more about?

2. Does management keep employees informed about district plans, policies and "news" in the following areas:

   New schools?
   New processes?
   New programs?
   New services?
   The outlook for the district in the coming months ahead?

3. Does management communicate to employees written and verbal comments of praise from satisfied users of their services?

4. Does management give employees public recognition and praise through the newspaper or bulletin board for a job well done?

5. Have the employees ever seen or received a job description for their particular job?

6. Do you feel that the employees know what their advancement opportunities are in the district?

7. Does the district conduct periodic performance evaluations of each employee?

8. Does management let each employee know, periodically, how he stands, his progress, what his good points are and where he needs to improve?

9. Does top management or the top executive talk with employees in groups regularly?

10. Does top management or an executive regularly visit informally with employees at their work stations?

11. Does the district hold "family nights" regularly for benefit of the employees' family and friends?

Bulletin Boards

1. Are there attractive and well-lighted bulletin boards at all locations in the district?

2. Are bulletins changed regularly?

3. Is interesting and important information posted for the purpose of attracting continuing attention from the employees?

4. Has some person been given the responsibility for maintaining the bulletin boards?

5. Does this person have the authority to approve bulletin board notices and determine what notices can be posted?

Employee Handbook and Policy Manual

1. Does the district have an attractive handbook for both new and older employees?

2. Has an employee been assigned the responsibility for keeping the handbook up-to-date?

3. Does the present handbook contain the following items of information for employees:

   The district's history?
   Type of services rendered?
   Employee benefits?
   Personnel policies?
   Employee recreation activities?
   Information on wages and salaries?
   Description of the communications program?
   Information on safety and health rules?
   District rules on conduct and other plant regulations?

4. Does the district publish special booklets covering any of the following benefits:

   Group insurance plan?
   Pension plan?

Suggestion System

1. Does the district sponsor a formal suggestion system for encouraging employees' suggestions?

2. Does management acknowledge all suggestions whenever possible?

3. Are employees' suggestions given prompt attention?

4. Does the suggestion system provide for explanations on rejected suggestions?

5. Do employees' suggestions, when signed, become a part of their personnel file?

6. Does management publicly recognize through district newspapers or bulletins employees who have had their suggestions accepted?

Employees' Exit Interviews

1. Are exit interviews conducted on all employees leaving the district?

2. Is a form used for recording the results of the exit interview?

3. Is the information obtained in the exit interview used to correct any problems uncovered?

4. Are supervisors given the opportunity to see and comment on the information obtained in an exit interview?

5. Is the exit interview report form in the employee's personnel file?

B

TAB B

UNION RECOGNITION UNDER THE RODDA ACT

UNDERSTANDING THE RODDA ACT (SB 160)

The Statute On

Meeting and Negotiating in Public Educational Employment

By

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INTRODUCTION

The recent passage of the Rodda Act governing employer-employee relations at the elementary and secondary levels in the public school systems, including community colleges, adds California to the growing list of states which now provide similar legislation for their public school employees.

It is important for all those in California public education to understand the scope and ramifications of such laws. Public school management at all levels, certificated and classified personnel, and officials of employee organizations, face a demanding task in adjusting to the many important changes that the Rodda Act will bring about in the next few years.

The Act contains many complex provisions setting forth basic rights, duties, obligations, and responsibilities for all parties covered by the statute. Some of the provisions are couched in unavoidably ambiguous language which can be clarified through promulgation of rules, regulations, and interpretations by the Educational Employment Relations Board, by the courts, and by the parties themselves.

The analysis and breakdown of the Rodda Act that follows is one attempt to aid the parties in their task of meeting its many new requirements.

This conference, sponsored by the Institute of Industrial Relations, UCLA, is designed to facilitate the transition from the Winton Act to the Rodda Act--beginning a new era in labor relations in the public sector.

PURPOSE

The basic purpose of the Rodda Act is to improve employer-employee relations and personnal management within the California public school systems. This objective is to be achieved by:

1. providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice;

2. being represented by such organizations in their professional and employment relationships with public school employers;

3. selecting one employee organization as the exclusive representative of the employees in an appropriate unit; and

4. affording certificated employees a voice in the formulation of educational policy.

EMPLOYEE COVERAGE AND EXEMPTIONS

The Rodda Act applies to employer-employee relations and personnel management in all California local public school districts, community college districts, county departments of education, and their governing boards or officers. The Act covers both certificated and classified employees (K-14), except for management and confidential employees.

DATES OF IMPLEMENTATION

Governor Edmund G. Brown Jr. signed the Act on September 22, 1975. The entire Act does not become finally effective, however, until July 1, 1976. The critical dates are:

January 1, 1976	The Educational Employment Relations Board (EERB) becomes operative on this date. The three members are appointed by the Governor with the advice and consent of the State Senate.
April 1, 1976	Provisions relating to the organizational rights of employees, the representation rights of employee organizations, and election and certification procedures become operative.
July 1, 1976	On this date the Winton Act is completely replaced by the Rodda Act. The Winton Act remains in effect until July 1, 1976.

DEFINITIONS

The statute contains many definitions, the most important of which are:

1. A certified organization is one certified by the board as the *exclusive representative* of a group of public school employees in an appropriate unit.

2. Confidential employees are those who, in the regular course of their duties, have access to, or possess information relating to employer-employee relations of the public school employer. (The Rodda Act provides that any person serving in a management or confidential position shall not be represented by an exclusive employee organization. A person in such a position, however, has the right to represent him/herself individually or to be represented by an employee organization whose membership is composed entirely of employees holding the same positions; but such an organization does not have the right to meet and negotiate with the employer.)

3. An employee organization is any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that employer.

4. Exclusive representative means that the certified or recognized employee organization is the *exclusive representative* of certified or classified employees in an appropriate unit.

5. Good faith negotiations. Both parties have a duty to meet and negotiate in good faith. They must begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of the adoption date, so that there is adequate time for an agreement to be reached or for the resolution of an impasse.

6. Impasse means that the parties have reached a point in meeting and negotiating on matters within the scope of representation where future meetings would be futile.

7. Management employees are excluded from the Act; the term refers to any employee having significant responsibilities for formulating district policies or administering district programs. Management positions are designated by the public school employer subject to review by the board.

8. Meeting and negotiating means meeting in good faith and negotiating between an exclusive representative of the employees and of the public school employer in an effort to reach agreement on matters within the scope of the representation. Either party may request that all agreements be reduced to writing in a signed document binding on both parties.

9. Public school employee means any person employed by any public school employer except persons elected by popular vote, those appointed by the Governor, and management and confidential employees.

10. Public school employer means the governing board of a school district, a county board of education, or a county superintendent of schools.

11. Supervisory employees - not to be confused with management or confidential employees - refer to anyone who, regardless of his/her job description, has the authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances or effectively recommend such action. The exercise of such authority must involve independent judgment and not be merely of a routine or clerical nature.

    Supervisory employees may have a negotiating unit, but it is an appropriate unit only if it includes all supervisors employed by the district, and it may not be represented by the same employee organization whose members the supervisors have authority to supervise. Classified employees and teachers may not be included in the same unit with supervisors.

12. Organizational security means: (1) A *maintenance-of-membership* arrangement in which an employee who decides to join the employee organization must maintain his/her membership in good standing for the duration of the agreement as a condition of continued employment. Such an employee also has the right to withdraw his/her membership during a 30-day period after expiration of the written agreement. Under a maintenance-of-membership provision, no one is *required* to join the organization, nor do new employees have to join. However, once a decision is made to join the organization, it must be maintained until the agreement expires. (2) An *agency shop* whereby as a condition of continued employment an employee must either join the recognized/certified employee organization or pay the organization a *service fee* equivalent to the regular dues, initiation fees, and general assessments. The service fee must be paid

for the duration of the agreement or for a period of three years from the effective date of such agreement, whichever comes first.

An organizational security provision may be effective only if agreed upon by both parties. The employer may request that the provision be severed from the rest of the proposed agreement and be voted upon separately by all members in an appropriate unit. The provision may become effective only if a majority of those in the unit vote to approve such an arrangement. The vote has no bearing on other provisions of the proposed agreement.

An organizational security arrangement may also be rescinded by a majority vote of the employees in the negotiating unit in accordance with board rules and regulations.

Recognized or certified employee organizations must maintain accurate records of all financial transactions and each year must submit to the board and to members of the employee organization (within 60 days after the end of its fiscal year) a balance sheet and an operating statement certified by a professional accountant.

ADMINISTRATION

Educational Employment Relations Board

The most important feature, perhaps, of the Rodda Act is the establishment of an administrative agency, the Educational Employment Relations Board (EERB), to effectuate the policies and procedures of the statute. The EERB is to the Rodda Act what the National Labor Relations Board (NLRB) was to the Wagner Act. Board members are to be appointed by the Governor no later than January 1, 1976, and confirmed by the State Senate. Terms of the original three members are staggered: one year, three years, and five years. All re-appointees serve for five years, except an appointee filling a vacancy serves only for the unexpired term of the member being succeeded. Board members are eligible for reappointment. The Governor appoints the chairperson, and may remove any member of the board for neglect of duty or malfeasance in office. A quorum consists of any two members of the board. Board members are not permitted to hold any other public office and may not receive any other compensation for services rendered beyond their annual salaries of $36,000.00.

The board appoints an executive director and other persons deemed necessary to perform its functions. The executive director must be familiar with employer-employee relations. The board may also employ an independent general counsel to represent it in litigation.

Powers and Duties of the Board

Among the most important powers and duties of the board are:

a. To determine appropriate units and to approve appropriate units in disputed cases.

b. To decide whether a disputed matter is within the scope of representation.

c. To conduct secret ballot representation elections and to certify the results.

d. To establish lists of qualified persons to serve as mediators, arbitrators, and factfinders.

e. To conduct studies on employer-employee relations, make wage surveys, gather data on fringe benefits and employment practices in the public and private sectors and recommend needed legislation. The board may also arrange for research and training programs to assist public employers and employee organizations. The board is required to submit an annual report to the State Legislature by February 15 of each year on its activities during the preceding calendar year.

f. To adopt appropriate rules and regulations to effectuate the purposes and policies of the Act.

g. To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, issue subpoenas, and require the production of records, books, or papers relating to any matter within its jurisdiction.

h. To investigate unfair labor practice charges or alleged violations of the Act.

i. To petition a court to enforce its orders, decisions, or rulings. Upon issuance of a complaint charging that any person has engaged in an unfair labor practice, the board may petition the court for appropriate temporary relief or restraining order.

j. To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions. No fewer than two board members may participate in any ruling or decision on the merits of any dispute coming before it. A refusal to issue a complaint requires the approval of two board members.

k. To decide contested matters involving recognition, certification, or decertification of employee organizations.

l. To decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

The Act stipulates that any person who interferes with the functions of any member of the board, or any of its agents, may be guilty of a misdemeanor and can be fined up to $1,000.00.

EMPLOYEE ORGANIZATIONS:

REPRESENTATION, RECOGNITION, CERTIFICATION, AND DECERTIFICATION

Request for Recognition

A public school employer may voluntarily recognize an employee organization as the exclusive representative for employees of an appropriate unit if the organization has filed a request for such recognition. The request must show that a majority of employees in an appropriate unit wish to be represented by such organization. The employee organization must describe the grouping of jobs or positions which constitute the claimed appropriate unit and must include proof of majority support on the basis of:

a. current dues deduction authorizations
b. notarized membership lists
c. membership cards
d. petitions designating the organization as the exclusive representative

Once recognition is requested, notice of such request must be posted immediately and conspicuously on all employee bulletin boards in each employer facility in which members of the unit claimed to be appropriate are employed.

Refusal of Recognition

The employer may refuse voluntarily to grant a request for recognition if:

1. He desires that a representation election be conducted or doubts the appropriateness of a unit. If the employer desires a representation election, he must notify the board which then may conduct a representation election;

2. Another employee organization either challenges the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of the original notice for recognition. The competing claim must also be supported by evidence regarding current dues deduction, authorizations, notarized membership lists, membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the intervening organization. An election must be held if the intervening organization can show support of at least thirty (30) percent of the members of an appropriate unit;

3. There is currently in effect a lawful written agreement with another employee organization covering any employees included in the unit described in the recognition request, unless recognition is requested within the period of less than 120 days, but more than 90 days prior to the expiration of the agreement;

4. If within the past 12 months, the employer has legally recognized another employee organization as the exclusive representative.

Representation Election

If, by January 1 of any school year, no employee organization has claimed majority support, then a majority of employees in an appropriate unit may petition the employer for an election provided the petition is signed by a majority of employees of an appropriate unit. An employee may sign such a petition even though not a member of any employee organization. After the petition is filed, the employer must post the notice of request on all employee bulletin boards at each school or other facility in which members of the unit are employed.

Any employee organization has the right to appear on the ballot if, within 15 workdays after the posting of such notice, it provides a thirty (30) percent showing of interest. At the end of the 15-day period following the notice, the employer must transmit to the board the petition and the names of all employee organizations that have the right to appear on the ballot.

The board is required to determine the appropriate unit or decide a question of exclusive representation if:

1. The employer doubts the appropriateness of the claimed unit;

2. An employee organization claims it has requested recognition as exclusive representative and the request has been denied by the employer or has not been acted upon within 30 days after filing the request;

3. An intervening employee organization claims it has filed a competing claim of representation;

4. An employee organization claims that the employees in an appropriate unit no longer desire a particular organization as their exclusive representative.

   The intervening organization must show that its petition is supported by current dues deduction authorizations, notarized membership lists, membership cards, or petitions from 30 percent of the employees in the unit indicating lack of support for the incumbent exclusive representative.

Conduct of Elections and Certifications

If the board finds that a representation question exists, it is required to decide such question by investigation or hearings. If the board cannot decide the matter in the course of its own investigation, it must conduct a secret-ballot election and certify the election results on the basis of which ballot choice received a majority of the valid votes cast. All ballots must contain a "no-representation" option, and the voter may not record more than one choice on his/her ballot; if so, that ballot is void and may not be counted. If none of the options on the ballot receives a majority of the votes cast, a runoff election must be conducted. The ballot for the runoff election must provide for a selection between the two choices that received the largest and second largest number of valid votes cast in the first election. The employee organization which receives a majority of the valid votes cast in a runoff election is then entitled to certification by the board and exclusive recognition by the public school employer.

No Elections Permitted

Elections are prohibited and petitions for such elections must be dismissed whenever:

a. There is currently in effect a lawful written agreement negotiated by the employer and another employee organization covering any employees included in the unit, or unless the request for recognition is filed less than 120 days but more than 90 days, prior to the expiration of the agreement;

b. The employer has within the previous 12 months legally recognized an employee organization other than the petitioner as the exclusive representatives of employees included in the unit.

RIGHTS AND OBLIGATIONS OF PUBLIC SCHOOL EMPLOYEES AND THEIR ORGANIZATIONS

To Join or Not to Join

Public school employees have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. They also have the right to refuse to join or participate in such activities and to represent themselves individually in their employment relations with the employer. However, once the employees have selected an exclusive representative and it has been legally recognized or certified, no employee in that unit may meet and negotiate individually with the employer.

Presenting Individual Grievances

Any employee may at any time present grievances to his/her employer, and have such grievances adjusted without the intervention of the exclusive representative, as long as the adjustment is reached prior to any agreed upon arbitration procedures. Adjustment of such grievances may not conflict with the terms of a current written agreement. The employer must withhold settling the grievance until the exclusive representative has a copy of the grievance as well as the proposed resolution, and is given an opportunity to respond.

Representation of Members

Employee organizations have the right to represent their members in their employment relations with the employers except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit, only that organization may represent that unit in its employment relations with the employer. The employee organization may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

Employee organizations must be given access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of rights guaranteed by the Act.

A reasonable number of representatives of an exclusive representative have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating with the employer and for the processing of grievances.

Dues Deduction

Employee organizations have the right to have membership dues deducted pursuant to relevant sections of the Education Code. However, once an organization is recognized as an exclusive representative for employees in an appropriate unit, then deductions as to any employee in that unit are not permissible except to the exclusive representative.

Duty of Fair Representation

Any employee organization recognized or certified as the exclusive representative must "fairly represent each and every employee in the appropriate unit."

UNFAIR PRACTICES

The employer may not:

a. Impose reprisals on employees, discriminate against, restrain, or coerce employees because of exercise of their rights.

b. Deny rights to employee organizations guaranteed by the Act.

c. Fail to meet and negotiate in good faith with an exclusive representative.

d. Dominate or interfere with the formation or administration of any employee organization, contribute to, or encourage employees to join any organization.

e. Refuse to participate in good faith in the prescribed impasse procedures.

The employee organization may not:

a. Cause or attempt to cause a public school employer to commit unfair labor practices.

b. Impose reprisals on employees, discriminate against, interfere with, restrain, or coerce employees because of exercise of their rights.

c. Refuse or fail to negotiate in good faith.

d. Refuse to participate in good faith in the Act's impasse procedures.

HOW ARE UNIT DETERMINATIONS MADE?

The board must decide questions of appropriate unit on the basis of the following criteria:

1. community of interest among the employees;
2. previous established practices, including:

    a) the extent to which such employees belong to the same employee organization,

    b) the effect of the size of the unit on the efficient operation of the school district.

Restrictions on Negotiating Units: Some Examples

1. A negotiating unit that includes classroom teachers must include all the classroom teachers employed by the public school employer, except management employees, confidential employees, and supervisory employees.

2. A negotiating unit of supervisory employees must include all supervisory employees employed by the district, and they may not be represented by the same organization which represents employees whom the supervisors supervise.

3. Classified employees and certificated employees may not be included in the same negotiating unit.

JUDICIAL REVIEW

A unit determination made by the board is not subject to judicial review unless (a) the board joins a request for such review; or (b) when the issue is raised as a defense to an unfair practice complaint. Board decisions in an unfair practice case are subject to court review unless the board declines to issue a complaint.

The board may seek court enforcement of any of its decisions. Board findings on question of fact, if supported by substantial evidence, are conclusive. A court decision on a board order may be appealed to a higher state court.

SCOPE OF REPRESENTATION (NEGOTIATIONS)

The scope of representation under the Rodda Act is divided into three main categories.

1. Mandatory subjects of representation are limited to matters relating to wages, hours of employment, and other terms and conditions of employment.

   "Terms and conditions of employment" are expressly defined to mean:

   a. Health and welfare benefits
   b. Leave and transfer policies
   c. Safety conditions of employment
   d. Class size
   e. Procedures used for employee evaluation
   f. Organizational security
   g. Procedures for processing grievances

2. Consultative - The exclusive representative of certificated personnel may *consult* on:

   a. Definition of educational objectives

   b. Determination of course content and curriculum

   c. Selection of textbooks (subject to legal limitations)

3. Employer Reserved Rights - All matters not specifically enumerated are reserved to the employer and may not be a subject of meeting and negotiating. However, nothing in the definition of scope of representation may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

   A public school employer or a designated representative who may, but need not, be subject to either certification or requirements for classified employees shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

GRIEVANCE PROCEDURES AND ARBITRATION

1. Negotiated agreements *may* provide for final and binding arbitration of disputes involving the interpretation, application, or violation of the agreement.

2. If the negotiated agreement does not provide for final and binding arbitration, the parties may submit a grievance dispute to final and binding arbitration pursuant to board rules.

3. If a party refuses to proceed to grievance arbitration pursuant to a negotiated agreement or pursuant to board rules, the other party may petition a court to direct arbitration pursuant to appropriate procedures and/or rules.

4. An arbitration award made pursuant to agreed upon procedures or board rules is final and binding upon the parties and may be enforced by a court.

PUBLIC NOTICE

The public notice section is intended to give the public an opportunity to express its views on the issues in negotiations. To carry out this intention, the Act provides that:

a. All initial proposals within the scope of representation must be presented at a public meeting of the employer and be made part of the public records.

b. Negotiations must be delayed for a reasonable time until the public has had an opportunity to express its views on the proposals at a meeting of the public school employer.

c. After the public has expressed its views, the employer is required to adopt its initial proposals at a public meeting.

d. Any new subjects of negotiations must be made public within 24 hours. If the employer votes on a subject, each member's vote must also be made public within 24 hours.

NEGOTIATION IMPASSE PROCEDURES

A. Mediation

Either party to a bargaining dispute may declare an impasse and ask the board to appoint a mediator. If the board finds that an impasse exists, it must appoint a mediator who is required to meet with the parties either jointly or separately and to take whatever steps deemed necessary to produce a mutual agreement.

The mediator's fees and expenses are paid by the board without cost to the parties. The parties are free, however, to agree on their own mediator, in which event the costs are shared equally.

If the mediator cannot resolve the controversy within 15 days after his/her appointment, and declares that factfinding is appropriate, either party may request that their differences be submitted to a factfinding panel.

B. Factfinding

If the impasse goes to factfinding, the following procedure is required:

1. Each party selects one member of the factfinding panel and the board appoints the chairperson who may be the same person who served as the mediator unless the parties object.

2. The panel holds hearings within ten days after its appointment and takes whatever steps are appropriate to investigate the dispute. The panel may request information from a variety of governmental and educational agencies, including any board of education.

3. Within 30 days (or longer if agreed to by the parties), the panel must submit to the parties its findings and recommendations based upon the following criteria:

    a. Applicable state and federal laws.

    b. Stipulations of the parties.

    c. The interests and welfare of the public and the financial ability of the public school employee-employer.

    d. Comparison of the wages, hours, and conditions of employment of the employees involved with those of other employees performing similar services, and with other employees generally in public school employment in comparable communities.

e. The consumer price index for goods and services.

f. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

g. Such other facts, not confined to those specified above, which are normally considered in making such findings and recommendation.

4. The panel's findings and recommendations are not binding and must be submitted privately to the parties before being made public. The employer must make them public within 10 days. The board pays the cost and expenses of the panel chairperson, but other mutually incurred costs are divided equally between the parties who also pay for the services of their respective panel members.

C. Mediation Resumed

The mediator appointed prior to factfinding may continue mediation efforts after the factfinding stage on the basis of the recommendations of the factfinding panel. Thus, the mediator may engage in three different levels or stages of mediation: (a) prior to factfinding; (b) during factfinding - as chairperson; and (c) subsequent to factfinding. This procedure seems to recognize the crucial role of the mediator in resolving negotiation impasses.

STRIKES

Enactment of the Rodda Act may not be construed as making Section 923 of the Labor Code applicable to public school employees. Section 923 of the Labor Code states in part that employees may engage in ". . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." It is important to note, however, that neither the court nor the board may hold invalid any negotiated agreement entered into between the employer and exclusive representative as a result of a strike.

EXEMPTIONS FROM OPEN MEETING ACTS

Unless the parties agree otherwise, the following procedures are exempt from the Ralph M. Brown Act* and the Bagley Act:**

a. Meetings and discussions between the parties

b. Meetings of a mediator with either or both parties

c. Hearings, meetings, or investigations conducted by a factfinder or arbitrator

d. Executive sessions of the local school board and its representatives involving its position on any matter within the scope of representation and instructing its designated representative.

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*The Ralph M. Brown Act requires open meetings for all local government agencies including school boards.

**The Bagley Act requires open meeting for all state agencies.

UNFAIR LABOR PRACTICES: AN INTRODUCTION

The format of labor relations regulation in this country was established in the enactment of the National Labor Relations Act in 1935.

Basically the format is a grant of rights to employees and then, in order to implement and effectuate the grant of rights, certain types of conduct are proscribed.

By way of illustration, in Section 7 of the NLRA we see that:

> *"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."*

This is a most significant grant of rights; however, in order to make this grant meaningful, standards of conduct were established to ensure the observance of these rights.

An essence, in enacting the NLRA the Congress prohibited certain conduct to achieve the desired objective.

In setting up these prohibitions Congress at first only dealt with employer misconduct and did not deal with the conduct of employee organizations until some twelve years later in 1947.

This was not simply the result of pure pro-labor prejudice on the part of Congress. Rather, Congress simply reacted to the situation then existent. Employers had adapted certain practices which were quite successful in thwarting organizational efforts by labor unions. These employer tactics included threats of demotion, transfer and discharge of union activists and the execution of such threats. If the organization of employees were to be encouraged, and such encouragement appeared to be the policy of the administration, then such employer practices would have to be curbed.

The enactment of the following employer unfair labor practices was designed to prohibt such tactics by employers:

SELECTED UNFAIR LABOR PRACITCE PROVISIONS OF THE NATIONAL LABOR RELATIONS ACT (NLRA)

Sec. 8.(a) It shall be an unfair labor practice for an employer-

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage membership in any labor organization; ....

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

In 1947, Congress finding that unions had grown strong and that there needed to be a better balance in labor relations regulation, enacted certain prohibitions on the conduct of employee organizations. The following unfair labor practices were designed to curb what Congress determined to be unfair tactics on the part of labor unions.

SELECTED UNFAIR LABOR PRACTICE PROVISIONS OF THE NATIONAL LABOR RELATIONS ACT (NLRA)

Sec. 8.(b) it shall be an unfair labor practice for a labor organization or its agents-

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Thus we see that the concept of unfair labor practices evolved to ensure effectuation of the grant of rights to employees; to promote the collective negotiating relationships, to encourage a sense of responsibility in the parties to such relationship; in summary to reduce industrial strife.

With the enactment of public employee relations legislation, this same basic concept was followed.

Some public jurisdictions did so slavishly, seemingly concluding that there is no substantial difference between labor relations in the public sector from those in the private sector. Other jurisdictions indicated a sensitivity to the concept that there may be a difference.

Without deciding this question, it does appear that the vast reservoir of experience in the private sector in the area of unfair labor practices (at least where similiar statutory provisions exist) does provide a resource that should be utilized.

In the discussions within this section we have <u>assumed</u> that the EERB will apply this concept.

MANAGEMENT'S RIGHTS AND RESTRICTIONS DURING UNION ORGANIZING

During a union's organizing campaign, it is important to insure that management (including confidential and supervisory employees) does not commit illegal or objectionable acts that interfere with the free choice of employees or with the election process.

It is important for management to be aware of the effects of its actions during this crucial period. Moreover, it is the responsibility of the union to crutinize management behavior to determine if their organizing or election rights are violated.

If the EERB or a court finds that management has violated such rights, it might well set aside the results of an election and hold a new election. Under some circumstances the EERB might order more drastic action.

Supervisors will presumably be considered to be agents of the school district, which means that the district can be held accountable if they violate any of the basic campaign rules. This does not mean that supervisors must become legal experts, but it is important that they be aware of the following do's and don'ts during an organizing campaign.

The term "union" as used here includes any organization (including a "professional association") which is attempting to organize school district employees for the purpose of collective negotiations under SB 160 (The "Rodda Act").

Since the vast majority of unfair labor practices are filed by unions against the actions of management, we have limited this discussion to those activities.

The management restrictions or "DO NOT'S" set forth below are based upon a distillation of decisions in both public and private sector labor relations prior to the passage of SB 160. We assume that the EERB will, in most instances, use the same underlying legal precedents in their determination of what constitutes an "unfair labor practice" (or "objectionable conduct" in the context of a representation election). Thus, the "DO NOT'S" are applicable irrespective of the position taken by a district in response to union organizing attempts. Both union and management should approach this list with the following question in mind: Is district management acting in a manner consistent with the principles expressed in these items?

Some of the "DO'S" under each subsection are for those districts that wish to affirmatively tell their side of the story to employees prior to a secret ballot vote on union representation. SB 160 does not expressly permit such a management "campaign," but neither does it prohibit it. Until the EERB decides this question, there is some element of legal risk in an affirmative management campaign. Union personnel should closely monitor procedures used in such an affirmative effort.

I. INTERROGATION

DO NOT ask employees questions about the union, for example, whether an employee supports the union, whether other employees support the union, who attended union meetings, who has signed an authorization card or petition, who intends to vote for the union, or similar questions.

DO NOT conduct polls or informal "straw" votes to ascertain the extent of the union's support.

DO NOT ask job applicants whether they favor unions, or whether they are or have been union members.

DO be a good listener and keep open the channels of communications with your employees. Although you may not ask questions, you may listen to any information employees wish to volunteer about the union. Such information should be reported promptly to administration.

2. SURVEILLANCE

DO NOT spy, or give the impression you are spying, on union meetings or activities.

DO NOT ask an employee to attend a union meeting and report back to you concerning its results.

DO be observant as to symptoms of union organizing activity and report them promptly to administration.

DO listen attentively to information volunteered by employees about what happened at a union meeting, and report such information promptly to administration.

3. THREATS AND REPRISALS

DO NOT threaten employees with discharge, discipline or adverse job assignments to discourage union support.

DO NOT threaten that the district will adversely change its operations, subcontract work, or lay off employees if a union is certified.

DO NOT engage in reprisals against union supporters. For example, employees who support a union should not be fired, disciplined or reprimanded, or given undesirable work assignments or schedules, or subjected to unusual enforcement of work rules, in order to discourage union activities.

DO continue to maintain effective discipline among your employees, including known union supporters. If you fail to do so, you may give support to the union's organizing effort. However, legal counsel should be consulted before an employee is discharged or severely disciplined during an organizing campaign. Be sure to document all violations and warnings or other disciplinary actions.

DO maintain "business as usual" in your department. For example, if normal operations would dictate a particular job assignment or transfer, you should not hesitate to make such an assignment or transfer merely because an employee is sympathetic to a union.

4. PROMISES AND CHANGES

DO NOT promise that you or the district will improve or change wages, benefits, or working conditions if the employees cease their support of a union.

DO NOT make such changes in order to discourage union support. However, you may implement changes which were decided upon prior to the advent of union activities, or which are normally made at a specified time of year (subject, of course, to the meet and confer requirements of the Winton Act.)

DO tell the employees that management will continue its efforts to maintain fair and competitive wage and benefit levels, and to continue to make the district a good place to work.

5. SOLICITATION

DO NOT prohibit employees from soliciting support for a union if such solicitation is done on the non-working time of all employees involved.

DO make sure that working time is used for work, and that the district's policies and regulations regarding solicitation and distribution of literature are properly enforced.

DO notify administration immediately if you see outside organizers soliciting or distributing literature in the district in violation of the district's policy on access.

6. MISREPRESENTATIONS

DO NOT misrepresent facts about the union or its activities, or about any campaign issue. Although this might not ordinarily be considered a legal violation unless it occurs so close to the time of the election that the union cannot effectively reply, your credibility will be impaired if you misstate the facts.

DO give your employees helpful information of a factual nature about the union, and tell them about the realities of union membership and representation (including union dues, fines, and assessments), existing district benefits and policies, and other campaign issues.

DO act promptly to correct legally erroneous or misleading statements by union supporters (e.g., many employees have been told that they must join the union now. Employees have the free right to join or not join such organizations. Obligatory membership (or service fees) could only occur after negotiations if the district agreed to it as part of a negotiated agreement).

7. GROUP MEETINGS AND SPEECHES

DO NOT conduct group meetings or give speeches regarding the union during the last 24 hours prior to the start of a representation election.

DO hold such meetings and give speeches at other times during the campaign, if approved by administration.

DO NOT assume that the 24-hour rule establishes a 24-hour moratorium on campaigning, as the rule will probably apply only to group meetings and speeches.

8. MANAGEMENT OFFICES

DO NOT call employees into your office or any other management office -- or any area of the district which has the characteristics of a management office -- to discuss the union.

DO feel free to discuss the union with employees at other locations in the district -- for example, in the cafeteria.

9. HOME VISITS

DO NOT visit the homes of employees specifically to discuss the union.

DO feel free to discuss the union with employees in the district, except in management offices and similar areas.

10. ELECTIONEERING

DO NOT electioneer at or near polling places if an election is held.

DO encourage all eligible employees to vote; make time available for voting; and if necessary, arrange transportation for off-duty employees who cannot otherwise get to the polls.

11. OTHER

(a) You should NOT:

1. Say that the district would refuse to negotiate if a union were elected, or that a strike would be inevitable.

2. Sponsor or circulate anti-union petitions among the employees.

3. Assist or solicit employees in revoking authorization cards or withdrawing from union membership.

(b) You may exercise your right of free speech under the law to make the following types of statements to employees:

1. Tell them you respect their right to do as they see fit, but you personally prefer not to have a union in the district and hope they will reject the union.

2. Say that you would recognize the union and bargain in good faith if a majority of the employees want it, but that improvements in wages and benefits are "negotiable" and not automatic.

3. Tell them they should immediately report any threats or intimidation of employees by the union or union supporters, and assure them the district will take all available action.

4. Remind employees that every person put between you and the person you are trying to talk to makes it more difficult to get your point across.

5. Explain to employees the benefits they presently enjoy, and remind them that these benefits were provided voluntarily (or through a more informal meet and confer process) without the need for a union and without payment of union dues and fees.

6. Tell employees that signing a union authorization card does not commit them to vote for the union in an election.

7. Inform them that unionization is for all practical purposes a "one-way trip." During the 12-month certification period the employees cannot displace the union, and if a contract is signed during this period, it acts as a bar to decertifying the union for up to three more years.

8. Refute any untruths in the union's communications.

CHECKLIST OF PERMITTED UNION ORGANIZING ACTIVITY

ACTIVITY	PERMITTED ?				
	Private Sector		SB 160		
	Yes	No	Yes	No	Maybe
I. Solicitation of Signatures to Union Authorization Cards					
A. Work Areas					
1. Work time		X			X
2. Non-work time (coffee breaks, lunch time, and immediately before and after normal working time)	X		X		
3. Work area of working employee by non-working employee		X			X
B. Non-working Areas					
1. Work time		X			X
2. Non-work time	X		X		
II. Distribution of Literature, Notices, etc.					
A. Employees					
1. Work area					
a. Work time		X		X	
b. Non-work time		X			X

ACTIVITY	PERMITTED ?				
	Private Sector		SB 160		
	Yes	No	Yes	No	Maybe
2. Non-work area					
a. Work time		X			X
b. Non-work time	X		X		
B. Non Employees					
1. During normal work time or non-work time on District premises; parking lots		X			X
III. Use of District Bulletin Board		X	X		
IV. Use of District Cafeteria					
A. Work Time		X			X
B. Non-work Time					
1. Informal meetings	X		X		
2. Formal meetings		X	X		
V. Use of District Conference Rooms		X	X		
VI. Use of District Mail Services		X	X		

ACTIVITY	Private Sector		PERMITTED ?			
			SB 160			
	Yes	No	Yes	No	Maybe
VII. Meetings on District Premises					
A. Work Time		X		X	
B. Non-work Time					
1. Formal meetings		X		X	
2. Informal meetings	X			X	
VIII. Use of District Parking Lot by Employee					
A. Work Time		X			X
B. Non-work Time	X			X	
C. Off Duty Employee	X			X	
IX. Use of Reproduction Service		X			X
X. Use of District Telephone					
A. Working employee to working employee		X		X	
B. Non-working employee to working employee		X			X

EXAMPLE OF DISTRICT REGULATIONS REGARDING EMPLOYEE ORGANIZATION ACCESS

On April 1, 1976, California Government Code, Section 3543.1 (b), relating to access to school premises by employee organizations, went into effect. This section provides as follows:

> "(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter."

Although the law does not mandate that school boards adopt "reasonable regulations" for implementation of this Section, many boards will presumably wish to do so.

At this time, no one can say with certainty what regulations will be determined to be "reasonable." In the final analysis, this will be decided by the Educational Employment Relations Board (and possibly by the courts), in the context of employee organization objections to school District conduct preceeding representation elections, or, after July 1, in the context of an unfair labor practice charge under Government Code, Section 3543.5 (b), which makes it an unfair labor practice for a public school employer to "deny to employee organizations rights guaranteed to them by this chapter."

However, even in light of these risks, the adoption of appropriate regulations seems advisable, since the absence of regulations will presumably leave each employee organization free to advocate its views of what constitutes "reasonable" access. The policy recommendations set forth below are identified in terms of policy objectives and recommended language. In each District, the Board and District management should reach a determination as to whether they feel the enumerated objective to be valid prior to utilizing the recommended language as part of an access regulation.

Objective: To assure that access by union organizers and solicitation of District employees does not interfere with the working time of employees and the educational programs of the District.

Language: It is the policy of _____ School District that employee organizations shall have the right of access to District employees at reasonable times. The term "reasonable times" as used herein means employee rest periods, meal periods, and any time before or after an employee's working day when such an employee is present upon District property, but is not expected to be performing services, or to be ready to perform services, on behalf of the District.

Objective: To define "areas in which employees work" for the purposes of this policy.

Language: Representatives of employee organizations may contact employees in any lounge facility, meeting room, office, or classroom of the District, provided that nothing herein shall be deemed to permit such access to a teacher at any time set aside for consultation or preparation, or at any time that students or parents are present in the classroom where such access might otherwise be permissible, and provided further that if such access occurs in the proximity of District employees who are otherwise performing duties on behalf of the District, such access shall not be utilized in a manner that will disturb, disrupt, or otherwise interfere with the work of any employee of the District.

Objective: To regulate the use of "institutional facilities" (meeting rooms) in a manner consistent with SB 160 as well as with existing provisions of the Education Code.

Language: Representatives of employee organizations shall have the right to utilize District facilities for the conduct of meetings with District employees. Requests to utilize such facilities shall be made upon forms to be prescribed by the District, and shall be subject to prior requests for the utilization of such facilities by groups entitled to their use under provisions of the Education Code. Any employee organization desiring such use of such facilities shall file with the Superintendent the certification required by California Education Code, Section 16565. Meetings conducted in such facilities shall in no way conflict with the work of District employees, and shall in no way conflict with the public school purposes of the District.

Objective: To assure that union organizers entering a school campus provide proper notification to campus authorities of their presence.

Language: To assure the safety and security of students, any representative of an employee organization who wishes to enter a school campus of the District during hours in which students are present shall notify the principal's office of his identity and his status as the representative of an employee organization. Appropriate identification and credentials may be required in instances when management at the campus level does not know or have reason to know of the individual's identity or affiliation.

Objective: To assure that the right of access is not utilized to harass employees.

Language: Access pursuant to this policy shall in all instances be subject to the right of the individual employee not to be harassed, restrained, intimidated, or coerced.

Objective: Regulate the use of District bulletin boards.

Language: Employee organizations shall have the right to utilize all bulletin boards normally used by the District for communication with its employees. One copy of all materials to be posted shall be provided to District management at the facility in which such posting is to take place prior to posting. Nothing herein shall be deemed to permit the posting of defama-

tory or obscene materials, and such materials will be removed without notice. The employee organization and its representatives shall be responsible for the maintenance of any materials posted on District bulletin boards, and for the prompt removal of any out of date materials to assure that adequate space is available for materials that must be posted upon such bulletin boards.

Objective: To regulate the utilization of District mailboxes.

Language: Existing District mailbox facilities may be utilized by employee organizations for communications with members or with other employees of the District. Copies of all materials to be deposited in District mailboxes shall be provided to the school secretary, who shall be responsible for the depositing of such materials.

Objective: (Optional) To limit access by employee organizations after an exclusive representative has been certified for an appropriate unit of employees (the adoption of this language would involve some legal risk, since Section 3543.1 (b) does not specifically limit the right of access after such certification. However, it seems reasonable that a District may expect a certain measure of "labor peace" after such a certification. If rival organizations are allowed full rights of access after certification, experience has shown that management bears the brunt.)

Language: After an employee organization is properly certified as the exclusive representative of an appropriate unit of District employees, the rights of access enumerated in this policy shall be limited to such organization, provided that, subsequent to a finding by the Educational Employment Relations Board pursuant to Government Code, Section 3544.7 (a) that an election shall be held pursuant to a petition filed under Section 3544.5 (d), the organization having filed such a petition shall enjoy full rights of access under this policy until such time as an exclusive representative may be certified for the employees in such unit.

SCHOOL DISTRICT BULLETINS TO EMPLOYEES REGARDING SB 160

Some districts feel the need for a "bulletin" for use in advising employees of the basic legal aspects of SB 160.

The suggested language which follows should not be viewed as the exclusive means of advising your employees concerning the actualities of this law. Rather, it is one of several possible means (including employee meetings) which, in your judgment might be used if circumstances warrant.

Furthermore, the contents should not be viewed as "campaign" literature (in which you might attempt to persuade employees to not select a union to represent them). Instead every effort has been made to keep the contents legally neutral, and, in areas needing further judicial interpretation, to identify such a need.

However, one other thing you should consider is the "real world" of union organizing. Some (not all-but some) union organizers operate on the theory that the side that gets to the employees last with the biggest promises will win. Accordingly, you should expect that if you decide to send a bulletin to your employees, one or more unions may use it as a "springboard" for further communications. This is a calculated risk that should be understood, weighed, and accepted if this document is to be used by you.

A question-and-answer format has been utilized because experience has shown it to be a simple and effective means of isolating and analyzing issues - yet one that does not insult the intelligence of employees.

Finally, if you wish to make any changes or additions to this document before reproducing it on district letterhead, legal counsel should be consulted.

EXAMPLE: School District Bulletin to Employees Regarding SB 160

TO: All _____ School District Employees

FROM: _____ Superintendent

RE: Questions and Answers on SB 160

(Note: if your employees are more accustomed to a letter format, or to some other format for communications of this nature, that is the one you should use. Also, it may not be necessary to send this document to all of your employees at this time, but remember: just because you have not heard of a union trying to organize employees, this does not mean that the effort is not occurring. Finally, the bulletin does not have to be from the superintendent if some other member of district management customarily communicates with employees on personnel and employee relations matters.)

During the past several weeks, a number of you have asked questions about California's new school employment relations law - SB 160 (the "Rodda Act"). I have had many of the same questions, and have gone to various sources for guidance. Based upon the input I have received, the most common questions - and answers - are as follows:

Question: Is it true that this new law requires me to join an employee organization or union?

Answer: SB 160 gives school district employees the same rights they have had under the Winton Act since 1965: the right to join or be represented by an employee organization, and the right to refuse to join or be represented. However, there are two changes:

1. After April 1, an employee organization may become the "exclusive representative" of employees in an appropriate group (or "unit"). This means that if a majority of the employees in the unit select the organization to represent them, it then has both the right and the duty to represent all employees in the unit on matters of wages, hours, and conditions of employment, irrespective of whether or not they are members of the organization; and

2. After July 1, Section 3546 of the new law will provide that an employee organization may request that district management negotiate on various forms of "organizational security," including the so-called "agency shop." If district management agreed to include such a provision in a contract,it could provide that all employees in an appropriate unit would have to join the employee organization or pay a "service fee" in an amount that might be the same as the organization's initiation fee, dues, and assessments.

Question: Everyone is talking about SB 160 as a "collective bargaining" law for school employees. What does this mean, and what difference does it make?

Answer: The process under SB 160 is not really "collective bargaining" as it exists in private industry. For example, the new law does not give public employees the right to strike, and it requires negotiations on a relatively limited range of "working conditions."

Question: There has been a lot ot talk lately about "management" and "confidential" employees. What is significance of these terms?

Answer: SB 160 requires the Board to designate as "management" those employees who have a significant role in the formulation of the District's policies and the administration of its programs; and as "confidential" those who normally have access to confidential information on employee relations matters.

Question: I have read SB 160 and do not fully understand what it means. Where do I go from here?

Answer: You are not alone in being somewhat confused about the contents of SB 160. It contains some contradictory provisions, and many provisions that are ambigious, and will require future interpretations by administrative agencies and the courts. The law provides for the establishment of an Educational Employment Relations Board (EERB), which will operate in a manner similar to the National Labor Relations Board in the private sector. The three members of this Board have been appointed by the Governor, and we are advised that the EERB has held its first meetings in April, 1976. The EERB will be formulating rules for the conduct of employment relations matters in schools, and will begin the holding of various hearings to establish the interpretations of SB 160.

We expect that it may be several years before all of the contents of SB 160 are fully clarified so that school districts, school employees, and employee organizations will know with certainty what their rights and obligations are under this law.

UNIT DETERMINATION WORKSHEET

True False

( ) ( ) 1. To be eligible for voluntary recognition by a school board as the exclusive representative, all of the following are required of a union/ employee organization: (a) be a recognized employee organization of the district; (b) purport to represent two or more district employees; (c) make a demand on the school board for recognition; and (d) demonstrate majority support of employees in the proposed unit that they claim to be appropriate.

( ) ( ) 2. Appropriate proofs of majority support of a union/employee organization are: (a) notarized membership lists; (b) membership cards; (c) petitions designating the union/organization as the exclusive representative; and (d) dues deduction records.

( ) ( ) 3. The union/employee organization must demonstrate that it has 50% +1 of the employees in the unit who are members of the union/organization before the school board can recognize it as the exclusive bargaining agent.

( ) ( ) 4. A certified bargaining agent is a union/employee organization that has been granted voluntary recognition by the school board.

( ) ( ) 5. If a school board has been meeting and negotiating with both the CSEA and Teamsters under the Winton Act, it is impossible for either to become the exclusive bargaining agent for all non-supervisor, non-management, non-confidential classified employees under the Rodda Act.

( ) ( ) 6. When requests for exclusivity become operable on April 1, 1976, the school board may extend the 15 day posting period if it so desires.

( ) ( ) 7. The school board may not grant exclusivity to a union/employee organization if another union/ organization challenges the appropriateness of the proposed unit during the 15 work day posting period.

( ) ( ) 8. The school board may not grant exclusivity to a union/employee organization if another union/ organization files a competing claim of majority status, supported by 30% of the affected employees, during the 15 work day posting period.

Unit Determination Worksheet

True False

( ) ( ) 9. The school board may not call for a representation election unless the EERB concurs.

( ) ( ) 10. In some cases a union/employee organization desiring prompt exclusive recognition, may amend its petition to conform to the employers' concept of the appropriate unit because it wants to save time and money.

( ) ( ) 11. A school board faced with a demand for exclusive recognition on April 1, 1976, and which does not receive a competing challenge of appropriateness or support during the posting period, has all of the following choices: (a) grant recognition voluntarily; (b) require a certification election; (c) challenge the appropriateness of the unit; and (d) do nothing at all.

( ) ( ) 12. If the school board refuses the grant recognition, it may notify the EERB of such action.

( ) ( ) 13. Unions/employee organizations must first file their exclusivity requests with the school employer, and if recognition is not granted, then either the employer or union/organization may go to the EERB.

( ) ( ) 14. The EERB may conduct representation elections on its own motion.

( ) ( ) 15. After rejecting a demand for recognition, a school board should notify the EERB, but does not necessarily have to request an election.

( ) ( ) 16. If a 30% support competition claim is received during the 15 work day posting period, the EERB election ballot, will provide employees with a choice between the two organizations, or no representation.

( ) ( ) 17. In question 16, above, the choice receiving the highest vote will be certified by the EERB.

( ) ( ) 18. To be certified in an EERB election, the top choice must receive a majority of the potential votes in the unit.

( ) ( ) 19. When a union/employee organization becomes the exclusive bargaining agent of a unit it has the duty to represent all of its members in their employer/employee relations.

Unit Determination Worksheet

True False

( ) ( ) 20. When the EERB has to decide the appropriateness of unit, it must be guided by all of the following: (a) management and confidential employees are excluded from all bargaining units; (b) supervisory employees must be in a unit with all other supervisory employees in the district, and may not be represented by the same representative as those that they supervise; (c) classified and certificated employees may not be in the same unit; (d) all classroom teachers must be in the same unit; (3) the community of interests among employees; (f) organizational membership; and (g) the effect of proposed bargaining units on the efficiency of school district operation.

( ) ( ) 21. An employee in a bargaining unit which has selected an exclusive representative may continue to negotiate directly with the school employer.

( ) ( ) 22. Management and confidential employees have full collective bargaining rights granted by the Rodda Act.

( ) ( ) 23. The similar community of interests between teachers and teacher aides would make it appropriate for them to be in the same bargaining unit.

( ) ( ) 24. A unit composed of all classroom teachers, adult school teachers, certificated children's center teachers, regular part-time teachers, and temporary-contract teachers would be an inappropriate bargaining unit based upon the community of interest concept.

( ) ( ) 25. When all employees in a unit belong to the same union (or employee organization), the terms unit and union are synonymous.

UNIT DETERMINATION ANSWERSHEET

1. F
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Senate Bill No. 160

CHAPTER 961

An act to repeal Article 5 (commencing with Section 13080) of Chapter 1 of Division 10 of the Education Code, and to add Chapter 10.7 (commencing with Section 3540) to Division 4 of Title 1 of the Government Code, relating to public educational employment relations, and making an appropriation therefor.

[Approved by Governor September 22, 1975. Filed with Secretary of State September 22, 1975.]

LEGISLATIVE COUNSEL'S DIGEST

SB 160, Rodda. Public educational employer-employee relations.

The existing statutes which govern employer-employee relations at the elementary and secondary levels in the public school system, including community colleges, are the Winton Act.

The Winton Act provides, among other things, that public school employees shall have the right to form, join and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations. The chosen employee organization has the right to represent its members in all matters relating to employment relations with public school employers. Representatives of a public school employer are required, upon request, to meet and confer with representatives of certificated and classified employee organizations on all matters relating to employment conditions and employer-employee relations, and with representatives of employee organizations representing certificated employees on procedures relating to educational objectives and aspects of the instructional program.

This bill would repeal the Winton Act operative July 1, 1976.

This bill would enact provisions to govern employer-employee relations of public school employers (as defined, including community college districts) and public school employees (as defined) through meeting and negotiating (as defined) on matters within the scope of representation.

This bill would enact provisions which would:

(1) Define various terms.

(2) Specify that the scope of representation is limited to wages, hours of employment, specified health and welfare benefits, leave and transfer policies, safety conditions of employment, class size, employee evaluation procedures, and grievance processing procedures.

(3) Create a 3-member Educational Employment Relations Board appointed by the Governor with the advice and consent of the Senate. Prescribe membership, terms, filling of vacancies, compensation, staffing, powers and duties of the board, including the

determination of issues of appropriateness of units and scope of representation, conducting secret representation elections, establishing lists of qualified mediators, arbitrators, and factfinders, conducting related studies and recommending needed legislation, adopting rules and regulations, investigating and determining charges of unfair practices, holding hearings, and issuing and enforcing, in superior court, subpoenas.

(4) Grant employees the right to form, join, and participate in employee organizations for the purpose of representation and the right to refuse to join, or participate in employee organizations. Prescribe rights, powers, and duties of employees, employee organizations, representatives, and exclusive representatives.

(5) Provide for recognition by employers or certification by the board, of exclusive representatives (as defined) for appropriate units and require their meeting and negotiating with employers. Prohibit any employee or other employee organization from representing that unit in employment relations with the employer once an exclusive representative has been chosen.

(6) Require fair representation. Require presentation of prescribed initial proposals at a public meeting of the employer and prescribe related time schedules and related publicity, public record, and public meeting requirements. Prohibit representation of management employees (as defined) and confidential employees (as defined) by an exclusive representative but permit individual representation or by an employee organization composed entirely of such employees but without power to meet and negotiate.

(7) Prescribe requirements and procedures for recognition and certification of exclusive representatives, including secret elections, and for declaration and resolution of impasses by mediators and, if that fails, by factfinding panels and specify guiding criteria therefor.

(8) Prescribe general criteria for appropriateness of units.

(9) Authorize entry into written agreements covering matters within the scope of representation, including organizational security, and exempt such agreements from a specified policy provision. Authorize such agreements to provide for final and binding grievance arbitration of disputes involving interpretation, application, or violation of such agreements and, in absence thereof, authorize submission of such disputes to final and binding arbitration pursuant to rules of the commission. Provide for utilization of designated judicial procedures.

(10) Make specified acts of employers unlawful, including certain acts against employees because of their exercise of rights afforded hereby, denial of rights of employee organizations, refusal or failure to meet and negotiate in good faith with an exclusive representative, and domination of, interference with, or financial or other support of, any employee organization.

(11) Make specified acts of employee organizations unlawful, including certain acts against employers, certain acts against em-

ployees because of their exercise of rights afforded hereby, and refusal or failure to meet and negotiate in good faith with the public school employer of employees of which it is the exclusive representative.

(12) Make Section 923 of the Labor Code inapplicable to public school employees but prohibit such provision from causing any court or the board to hold invalid any negotiated agreement entered into pursuant to this act.

(13) Establish judicial review of unit determinations and unfair practice decisions, under certain conditions.

Provide for numerous related matters.

Appropriate $300,000 for support of the Educational Employment Relations Board.

Make the provisions relating to creation and certain duties of, and appropriation for, the board operative on January 1, 1976. Make the provisions relating to the organizational rights of employees, the representational rights of employee organizations, and the recognition of exclusive representatives and the related procedures operative on April 1, 1976, and the balance of the added provisions operative on July 1, 1976.

This bill would also provide that there are no state-mandated local costs that require reimbursement pursuant to Section 2231, Revenue and Taxation Code because there are no duties, obligations, or responsibilities imposed on local government by this act.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 13080) of Chapter 1 of Division 10 of the Education Code is repealed.

SEC. 2. Chapter 10.7 (commencing with Section 3540) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 10.7. MEETING AND NEGOTIATING IN PUBLIC EDUCATIONAL EMPLOYMENT

Article 1. General Provisions

3540. It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such 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. Nothing contained herein shall be deemed to supersede other provisions of

the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

It is the further intention of the Legislature that nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of such school district with respect to district policies on academic and professional matters, so long as the exercise of such functions do not conflict with lawful collective agreements.

It is the further intention of the Legislature that any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible. The Legislature also finds and declares that it is an advantageous and desirable state policy to expand the jurisdiction of the board created pursuant to this chapter to cover other public employers and their employees, in the event that such legislation is enacted, and if this policy is carried out, the name of the Educational Employment Relations Board shall be changed to the "Public Employment Relations Board."

3540.1. As used in this chapter:

(a) "Board" means the Educational Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

(d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so

substantial or prolonged that future meetings would be futile.

(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 Educational Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him, as a condition of continued employment, if he does join, to maintain his membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his obligation to the employee organization within a period of 30 days following the expiration of a written agreement; or

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the agreement, or a period of three years from the effective date of such agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

(*l*) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(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 such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Article 2. Administration

3541. (a) There is in state government the Educational Employment Relations Board which shall be independent of any state agency and shall consist of three members. The members of the board shall be appointed by the Governor by and with the advice and consent of the Senate. One of the original members shall be chosen for a term of one year, one for a term of three years, and one for a term of five years. Thereafter terms shall be for a period of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Members of the board shall be eligible for reappointment. The Governor shall select one member to serve as chairperson. A member of the board may be removed by the Governor upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the commission, and two members of the board shall at all times constitute a quorum.

(c) Members of the board shall hold no other public office in the state, and shall not receive any other compensation for services rendered.

(d) Each member of the board shall be paid an annual salary of thirty-six thousand dollars ($36,000). In addition to his salary, each member of the board shall be reimbursed for all actual and necessary expenses incurred by him in the performance of his duties, subject to the rules of the State Board of Control relative to the payment of such expenses to state officers generally.

(e) The board shall appoint an executive director and such other persons as it may from time to time deem necessary for the performance of its functions, prescribe their duties, fix their compensation and provide for reimbursement of their expenses in the amounts made available therefor by appropriation. The executive director shall be a person familiar with employer-employee relations. He shall be subject to removal at the pleasure of the board. The board may employ a general counsel to assist it in the performance of its functions under this chapter. A person so employed may, independently of the Attorney General, represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested.

3541.3. The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve,

appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall such lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) Within its discretion, to conduct studies relating to employee-employer relations, including the collection, analyses, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by February 15th of each year on its activities during the immediately preceding calendar year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.

(g) To adopt, pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a

complaint shall require the approval of two board members.

(*l*) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

3541.4. Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars ($1,000).

3541.5. The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based of alleged violation of such a agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order

directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

Article 3. Judicial Review

3542. (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint.

(b) Any charging party, respondent, or intervenor aggrieved by a decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, shall have the right to seek review in a court of competent jurisdiction. Additionally, the board shall have the right to seek enforcement of any decision or order in a court of competent jurisdiction. The findings of the board on questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Once the record of the case has been filed with the court of competent jurisdiction, its jurisdiction shall be exclusive and its judgment final, except that it shall be subject to appeal to higher courts in this state.

Article 4. Rights, Obligations, Prohibitions, and Unfair Practices

3543. Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.

Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a

resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

3543.1. (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

(d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 13532 and 13604.2 of the Education Code, until such time as an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

3543.2. The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave and transfer policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, and procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the

scope of representation.

3543.3. A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

3543.4. No person serving in a management position or a confidential position shall be represented by an exclusive representative. Any person serving in such a position shall have the right to represent himself individually or by an employee organization whose membership is composed entirely of employees designated as holding such positions, in his employment relationship with the public school employee, but, in no case, shall such an organization meet and negotiate with the public school employer. No representative shall be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position or a confidential position.

3543.5. It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

3543.6. It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

3543.7. The duty to meet and negotiate in good faith requires the parties to begin negotiations prior to the adoption of the final budget

for the ensuing year sufficiently in advance of such adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse.

Article 5. Employee Organizations: Representation, Recognition, Certification, and Decertification

3544. An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include proof of majority support on the basis of current dues deduction authorizations or other evidence such as notarized membership lists, or membership cards, or petitions designating the organization as the exclusive representative of the employees. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the public school employer in which members of the unit claimed to be appropriate are employed.

3544.1. The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless:

(a) The public school employer desires that representation election be conducted or doubts the appropriateness of a unit. If the public school employer desires a representation election, the question of representation shall be deemed to exist and the public school employer shall notify the board, which shall conduct a representation election pursuant to Section 3544.7, unless subdivision (c) or (d) apply; or

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, a question of representation shall be deemed to exist and the public school employer shall notify the board which shall conduct a representation election pursuant to Section 3544.7, unless subdivisions (c) or (d) of this section apply; or

(c) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described

in the request for recognition, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement; or

(d) The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

3544.3. If, by January 1 of any school year, no employee organization has made a claim of majority support in an appropriate unit pursuant to Section 3544, a majority of employees of an appropriate unit may submit to a public school employer a petition signed by at least a majority of the employees in the appropriate unit requesting a representation election. An employee may sign such a petition though not a member of any employee organization.

Upon the filing of such a petition, the public school employer shall immediately post a notice of such request upon all employee bulletin boards at each school or other facility in which members of the unit claimed to be appropriate are employed.

Any employee organization shall have the right to appear on the ballot if, within 15 workdays after the posting of such notice, it makes the showing of interest required by subdivision (b) of Section 3544.1.

Immediately upon expiration of the 15-workday period following the posting of the notice, the public school employer shall transmit to the board the petition and the names of all employee organizations that have the right to appear on the ballot.

3544.5. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

(a) A public school employer alleging that it doubts the appropriateness of the claimed unit; or

(b) An employee organization alleging that it has filed a request for recognition as an exclusive representative with a public school employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request; or

(c) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 3544.1; or

(d) An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by current dues deduction authorizations or other evidence such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative.

3544.7. (a) Upon receipt of a petition filed pursuant to Section

3544.3 or 3544.5, the board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the petition. The determination of that board may be based upon the evidence adduced in the inquiries, investigations, or hearing; provided that, if the board finds on the basis of the evidence that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 3544.1, it shall order that an election shall be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on each ballot the statement: "no representation." No voter shall record more than one choice on his ballot. Any ballot upon which there is recorded more than one choice shall be void and shall not be counted for any purpose. If at any election no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement; or

(2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

3544.9. The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

Article 6. Unit Determinations

3545. (a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers

employed by the public school employer, except management employees, supervisory employees, and confidential employees.

(2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

Article 7. Organizational Security

3546. Subject to the limitations set forth in this section, organizational security, as defined, shall be within the scope of representation.

(a) An organizational security arrangement, in order to be effective, must be agreed upon by both parties to the agreement. At the time the issue is being negotiated, the public school employer may require that the organizational security provision be severed from the remainder of the proposed agreement and cause the organizational security provision to be voted upon separately by all members in the appropriate negotiating unit, in accordance with rules and regulations promulgated by the board. Upon such a vote, the organizational security provision will become effective only if a majority of those members of the negotiating unit voting approve the agreement. Such vote shall not be deemed to either ratify or defeat the remaining provisions of the proposed agreement.

(b) An organizational security arrangement which is in effect may be rescinded by majority vote of the employees in the negotiating unit covered by such arrangement in accordance with rules and regulations promulgated by the board.

3546.5. Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion. An employee organization required to file financial reports under the Labor-Management Disclosure Act of 1959 covering employees governed by this chapter shall be exempt from the requirements of this section.

Article 8. Public Notice

3547. (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

Article 9. Impasse Procedures

3548. Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter.

If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

3548.1. If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairman of the factfinding panel. The chairman designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

3548.2. The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take such other steps as it may deem appropriate. For the purpose of such hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state, or any political subdivision or agency thereof, including any board of education, shall furnish the panel, upon its request, with all records, papers and information in their possession relating to any matter under investigation by or in issue before the panel.

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the public school employee-employer.

(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.

(5) The consumer price index for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

(7) Such other facts, not confined to those specified in paragraphs

(1) to (6), inclusive, which are normally or traditionally taken into consideration in making such findings and recommendations.

3548.3. If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt. The costs for the services of the panel chairman, including per diem fees, if any, and actual and necessary travel and subsistence expenses shall be borne by the board. Any other mutually incurred costs shall be borne equally by the public school employer and the exclusive representative. Any separately incurred costs for the panel member selected by each party, shall be borne by such party.

3548.4. Nothing in this article shall be construed to prohibit the mediator appointed pursuant to Section 3548 from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 3548.3.

3548.5. A public school employer and an exclusive representative who enter into a written agreement covering matters within the scope of representation may include in the agreement procedures for final and binding arbitration of such disputes as may arise involving the interpretation, application, or violation of the agreement.

3548.6. If the written agreement does not include procedures authorized by Section 3548.5, both parties to the agreement may agree to submit any disputes involving the interpretation, application, or violation of the agreement to final and binding arbitration pursuant to the rules of the board.

3548.7. Where a party to a written agreement is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the agreement or pursuant to an agreement made pursuant to Section 3548.6, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such agreement or pursuant to Section 3548.6.

3548.8. An arbitration award made pursuant to Section 3548.5, 3848.6, or 3848.7 shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

Article 10. Miscellaneous

3549. The enactment of this chapter shall not be construed as

making the provisions of Section 923 of the Labor Code applicable to public school employees and shall not be construed as prohibiting a public school employer from making the final decision with regard to all matters specified in Section 3543.2.

Nothing in this section shall cause any court or the board to hold invalid any negotiated agreement between public school employers and the exclusive representative entered into in accordance with the provisions of this chapter.

3549.1. All the proceedings set forth in subdivisions (a) to (d), inclusive, shall be exempt from the provisions of Sections 965 and 966 of the Education Code, the Bagley Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3) and the Ralph M. Brown Act (Chapter 9 commencing with Section 54950) of Part 1 of Division 2 of Title 5, unless the parties mutually agree otherwise:

(a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and conferring process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

3549.3. If any provisions of this chapter or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 3. There is hereby appropriated from the General Fund to the Educational Employment Relations Board the sum of three hundred thousand dollars ($300,000) for the support of the board.

SEC. 4. Sections 3541 and 3541.3 of the Government Code, as added by Section 2 of this act, and Section 3 of this act, shall become operative on January 1, 1976. Sections 3543, 3543.1, 3544, 3544.1, 3544.3, 3544.5, 3544.7, and 3545 of the Government Code, as added by Section 2 of this act, shall become operative on April 1, 1976. Section 1 of this act and all other provisions of Section 2 of this act shall become operative on July 1, 1976.

SEC. 5. There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no duties, obligations or responsibilities imposed on local government by this act.

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TAB C

BARGAINING STRUCTURE: UNIT DETERMINATION

BARGAINING STRUCTURE: UNIT DETERMINATION

(This article is part of the Final Report, Public Sector Labor Relations: An Evaluation of Policy-Related Research, by Ralph T. Jones, Contract Research Corporation, Belmont, Massachusetts.)

1.0 Introduction

In order for bargaining to take place, there must be two parties, one representing the employer and one representing the employees. Decisions and rules for determining who these parties are, and what roles they will play in collective bargaining, constitute the issue of the "structure of bargaining."

Determination of the representative for employees may be done informally, i.e., an employer may recognize an employee organization as the official bargaining agent for a group of employees. Alternatively, rules and procedures may be established for determining the employee representative. To a large extent, the issue of who the employee representative will be revolves around the question of what constitutes a bargaining unit, i.e., a group of employees designated as appropriate for representation by an employee organization for purposes of collective bargaining. In the private sector, public policy affecting the nature of the "appropriate bargaining unit" traditionally has been the major question in any discussion of the "structure of bargaining."[1]

Provisions for unit determination are now a common component of statutes dealing with public sector labor relations. In the Federal Sector, Executive Order 10988 specified criteria for unit determination similar to those utilized by the National Labor Relations Board (NLRB) in the private sector. In a recent study of the state and local statutes, 90% had some provision for unit determination.[2] The presence of provisions for unit determination has not meant that the process of determining

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[1] Douglass V. Brown and George P. Schultz, "Public Policy and the Structure of Collective Bargaining," in Arnold Weber, ed., The Structure of Collective Bargaining: Problems and Perspectives (New York: The Free Press of Glencoe, Inc., 1961), pp. 307-324.

[2] Dennis T. Owaga and Joyce M. Najita, Guide to Statutory Provisions in Public Collective Bargaining: Unit Determination (Honolulu: Industrial Relations Center, College of Business Administration, University of Hawaii, June, 1973), p. 1.

appropriate units has been rationalized. Rather, these statutes have served to intensify the debate over how units should be structured in the public sector.

Before the adoption of legislation governing unit determination, employers recognized units on the basis of the unit's existence. The major criterion used was the extent of the existing organization with little attention paid to the appropriateness of the unit, either from the viewpoint of the managerial efficiency or the rights of representation of employees.[3] Where governments have attempted to reorganize units according to some legislative or administrative criteria, new units have been created. But in many other jurisdictions, the existing units remained intact. With some exceptions, collective bargaining in the public sector is characterized by a large number of small units. As Jack Stieber explains, "bargaining units in local governments tend to be relatively small because they are limited to individual governmental jurisdictions and because each jurisdiction contains several separate bargaining units."[4]

The central issue in unit determination in the public sector is how best to balance the objective of the employees' right to self-determination (which may justify a large number of small units) and the need for employer efficiency in bargaining. Since efficiency frequently is defined as minimizing bargaining time and costs and assuring that bargaining occurs at a level of government where management has the authority to negotiate and implement settlements, the efficiency criterion may require larger units.

The purpose of the following essay is to review the literature on the question of unit determination in the public sector so that it may be of assistance to policy-makers as they develop answers to these

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[3]Thomas P. Gilroy and Anthony C. Russo, Bargaining Unit Issues: Problems, Criteria, Tactics, Public Employee Relations Library, No. 43 (Chicago: International Personnel Management Association, 1973), p. 14; and Eli Rock, "The Appropriate Unit Question in the Public Service: The Problem of Proliferation," Michigan Law Review, Vol. 67 (March 1969), p. 1002.

[4]Jack Stieber, Public Employee Unionism (Washington, D.C.: The Brookings Institution, 1973), p. 156.

questions. Section 2.0 presents brief statements of the issues to be considered in this review of the research. Section 3.0 analyzes major research findings. Section 4.0 reviews the limitations of the findings. Section 5.0 presents conclusions and policy recommendations.

2.0 Issues

2.1 Large vs. Small Units

The tendency in the public sector has been to adopt the private sector practice of reorganizing small units that meet the criteria specified by the National Labor Relations Act (NLRA). These criteria give substantial weight to the right of self-determination by employees. Balanced against this is the argument that the presence of large numbers of small units prevents uniform application of employment policies, increases inter-union competition, complicates bargaining because of the overlap of units, and increases the costs of negotiations. The central issues therefore are: (1) What is the tradeoff between small and large units? (2) Under what circumstances are small units preferred to large units? (3) What is the argument for large units in the public sector?

2.2 Criteria for Unit Determination

The use of "community of interest" as a criterion for unit determination in the private sector, together with the practice of selecting an appropriate unit, rather than the most appropriate unit, has been transferred in many instances to the public sector. This practice has resulted in the proliferation of small units. The central questions for consideration are: (1) how practical is the criterion of "community of interest" for unit determination in the public sector; and (2) are there other criteria that should take precedence over community of interest?

2.3 The Trend Toward Larger Units

Most authorities argue that a proliferation of small units is not desirable for the public sector. Several approaches have been advanced for consolidating the unit structure. Before policy-makers adopt such approaches, however, one must ask: (1) is there empirical evidence that supports the contention that a proliferation of small units is undesirable; and (2) what has been the experience of jurisdictions which have adopted these approaches for consolidation of units?

2.4 Supervisors

Supervisors present unique problems for public sector unit determination. In the private sector, supervisors are excluded from bargaining units (because they are denied bargaining rights). In the public sector, however, some authorities argue that the term "supervisor" has a different meaning than it does in the private sector. Moreover, many supervisors already are in existing, recognized bargaining units (e.g., units of police, firefighters, teachers, nurses, etc.). Thus, the questions to be asked are: (1) what is a "supervisor" in the public sector; (2) should public sector supervisors be treated differently than in the private sector; (3) what are the consequences of including public sector supervisors in the same units with nonsupervisory personnel; and (4) what are the consequences of creating separate units for supervisory personnel?

3.0 The Findings

Arnold Weber, in an introduction to a symposium on bargaining structures in the private sector, claims that a discussion of bargaining units is complex because " . . . a given collective bargaining structure is composed of a multiplicity of units tied together in a complicated network of relationships by social, legal, administrative, and economic factors.[5] Weber identifies from the literature four types of bargaining units:

- Informal work group, i.e., a group bound together by common aspirations and common interpretations of the environment.
- Election district, i.e., the unit that is legally determined by the NRLB in the private sector and employee relations boards in the public sector.
- The negotiation unit, i.e., unit defined by the scope of the negotiations of the parties actually engaged in collective bargaining. Several election districts could join together to become a negotiation unit.
- The unit of direct impact, i.e., that group of employees directly affected by the agreement.[6]

This typology is a useful framework with which to analyze the literature on unit determination in the public sector.

3.1 Large vs. Small Units

The basic issues in the tradeoff between small and large units involve self-determination on the one hand and stability and efficiency on the other. Presumably, small units better protect the interests of their members, whereas the needs and desires of these members would tend to get less recognition in large units. However, this benefit can only be achieved at a cost, namely the efficiency of collective bargaining. A large number of bargaining units may contribute both to the instability of the labor relations system and to the social and economic costs of its functioning.

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[5] Weber, p. xviii.

[6] Ibid, pp. xviii-xix.

3.1.1 Arguments for Small Units

Most of the arguments for small units are based on the notion that the goals of industrial democracy and self-determination can only be achieved in small units. Thus, even those writers who have argued for limiting the number of bargaining units have acknowledged that small units do offer some important advantages, especially for labor. Eli Rock, one of the pioneers in calling for the consolidation of units in the public sector, claims that allowing groups to form their own units is democratic, especially because it recognizes "the instinct of exclusiveness" and the reluctance of employees to be forced into organizations in which they regard themselves as strangers.[7] Rock also admits that small units often protect groups of employees whose interest might receive scant attention in a large unit in which they were a small and therefore powerless minority. Moreover, where a small unit is composed of employees whose work is essential, it might be able to strike a better bargain for itself when left to do its own negotiating, rather than being subsumed in a larger unit.[8]

Furthermore, a small unit may be responsive to the peculiar needs and desires of various professional groups. In New York, lawyers resisted inclusion in a larger unit on the grounds that the ethics of their profession barred them from joining a union that included nonlawyers and that, therefore, they could not exercise the rights granted them by the Taylor Act unless a unit composed of state-employed attorneys was created.[9] Related to this issue is the problem of racial and ethnic minorities. Certain employee groups have large numbers of minorities whose inclusion in large units may lead to "strife" and instability within the

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[7] Rock, p. 1005.

[8] Ibid.

[9] Jerome Lefkowitz, The Legal Basis of Employee Relations of New York State Employees, an Occasional Paper of the Association of Labor Mediation Agencies (Albany, New York: Association of Labor Mediation Agencies, 1973), p. 10.

union, and this may "disrupt the bargaining relationship."[10] These rationales all relate to Weber's concept of the informal work group unit, where forcing a formal structure onto an extant group may lead to intra-unit difficulties such that intra-unit bargaining becomes as important as collective bargaining in achieving some kind of consensus.[11]

Consolidation of pre-existing units into larger ones also faces the social implication of changing the relationship of informal work groups. Consolidation of smaller units may disrupt long-standing bargaining relationships and run counter to the community of interest that has developed among a group of employees by virtue of their having been represented by the same union over a number of years. Finally, where government is opposed to allowing unions to gain a foothold and secure recognition, it may well be that unions can do so only if they are small.[12]

If the arguments for small units are largely based on the advantages that they can provide to employees and employee organizations, it does not necessarily follow that unions will invariably oppose larger units. The reasoning outlined above is, in essence, a theoretical treatment of the problem. When labor organizations are confronted with an actual situation, political realities often determine their position. Thompson points out that unions are willing to be inconsistent and argue for a narrow unit in one situation, while simultaneously demanding a

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[10]Harry Wellington and Ralph K. Winter, The Unions and the Cities (Washington, D.C.: The Brookings Institution, 1971), pp. 111-112.

[11]This was the argument used by the Communication Workers of America, AFL-CIO before the New Jersey Public Employment Relations Commission (PERC) in a case that resulted in the inclusion of all workers employed by state institutions into one unit. See State of New Jersey, Public Employment Relations Commission, PERC No. 50. The reader should note, however, that the New Jersey Civil Service Association used the same argument in their argument for a single unit. In short, the argument can be used to justify two very different unit structures.

[12]Rock, pp. 1005-1006.

broader one in those cases where its interests are better served by a large unit.[13] Similarly, Lefkowitz noted that in New York in 1968, "the predominant concern of the . . . unions in seeking particular units was extent of organization, that is, each . . . was concerned that there be found to be appropriate one or more units in which it could win an election."[14]

3.1.2 The Arguments in Favor of Large Units

The reliance in public sector unit determination upon the criteria of community of interest, employee freedom of choice, and the extent of union organization has led to a proliferation of small bargaining units in some jurisdictions. For example, as of 1969, Rock reported that New York City had over 200 units, "some containing as few as two employees."[15] Morris Slavney, Chairman of the Wisconsin Employment Relations Commission, reported in 1969 that units ranged in size from "approximately 2,800 employees in the Department of Public Works to four employees in the Election Commission."[16] Similar examples can be found in state governments. In Rhode Island, there are 74 units of state employees; in Oregon, there are 87.[17]

If the considerations cited in Section 3.1.1 demonstrate the arguments that can be made in favor of small units, most authorities nevertheless

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[13]Andrew Thompson, Unit Determination in Public Employment, Public Employee Relations Report No. 1 (Ithaca, New York: New York State School of Industrial and Labor Relations at Cornell University, 1967), p. 11.

[14]Lefkowitz, p. 10.

[15]Rock, p. 1003.

[16]Morris Slavney, "Experiences with Current Substantive Practices in Administering Wisconsin Public Employee Labor Relations Statutes," Collective Bargaining in the Iowa Public Sector, Conference Series No. 14 (Center for Labor and Management, College of Business Administration, The University of Iowa, 1969), p. 56.

[17]Preliminary Reports on Rhode Island and Oregon, prepared for U.S. Department of Labor (LMSA) Research Project in progress, "Management's Internal Organizational Response to the Demands of Collective Bargaining." Project Director is Ralph T. Jones, Contract Research Corporation, Belmont, Mass.

feel that the trend toward proliferation of units must be reversed. Typical of the comments describing the unit structure where units have proliferated is Horton's characterization of New York City's unit structure as "a crazy patchwork of bargaining units, excessive in number and highly complicated."[18] Indeed, as Lefkowitz noted in his description of the unit determination hearings in New York State in 1968, the New York City experience became a "bête noire," an example of the problems that derive from proliferation of units.[19]

Central to the argument against small units and in favor of large ones is that large numbers of public employees, regardless of their specific skills or the particular government agency for which they work, are subject to a common body of state or city-wide laws and regulations that cover such important matters as classification and pay plans, pensions, health insurance, and the merit system. Thus, to use Weber's framework, the "unit of direct impact" would be all those personnel covered by these uniform codes and procedures. Since they share a common unit of direct impact, it is argued that they should also be considered in the same election and negotiation unit. When representatives of a large number of small units do bargain separately over such matters as salaries, some authorities have claimed that the proliferation of units will result in an irrational pattern of settlements.

For example, Milton Friedman explains that in Nassau County, New York, where there is "a well-developed classification and salary structure, relating all positions to one another in a coherent manner," fragmentation like that found in New York City would emasculate such a

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[18]Raymond D. Horton, Municipal Labor Relations in New York City: Lessons of the Lindsay-Wagner Years (New York: Praeger Publishers, 1973), p. 32. In fairness to Horton, however, one should note that Horton indicated that the proliferation of units in New York was by design, not accident. Indeed, he says that Mayor Wagner, who was largely responsible for unit determination, had a political rationale for his actions: "to satisfy as many different unions as possible and to prevent one or a few unions from growing too large and too strong." Horton, p. 37.

[19]Lefkowitz, p. 10.

structure."[20] Or, as the Taylor Committee put it, the result of having many units might be "a crazy quilt of salary and wage and welfare benefits."[21] Friedman also fears that a larger number of small units will lead unions to fall victim to what has been termed the "get-more syndrome," with each seeking to negotiate larger increases than the others.[22] In addition, the critics of small units feel that if agreements are negotiated in a "crazy-quilt" manner, their administration will be difficult and time-consuming. The Taylor Committee raised the spectre of "conflicts over alleged inequities," that would interfere with management's ability to "maintain satisfactory and just employee relations among all groups of employees," and they also asserted that employees might be inhibited from changing jobs because of wide variations between the contracts negotiated in the different bargaining units.[23]

Another issue that has been raised in support of larger units has to do with the locus of power in government. Weber has suggested that units should be structured so that "substantive issues are treated on levels most appropriate to their solution."[24] The negotiating unit and the unit of direct impact should be coextensive. In the public sector, smaller units are generally located at the lower end of the authority heirarchy. In this case, the employee organization may have to deal with a management that is unable to bargain on some of the most important

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[20]Milton Friedman, "Unit Determination by Mini-PERBs," Proceedings of the New York University Twenty-First Annual Conference on Labor (New York: Matthew Bender, 1969), p. 511. For an elaboration of these arguments used to support the petition of New York State's Civil Service Employees Association for a single bargaining unit in New York State, see Melvin H. Osterman, Jr., Trial Memorandum of Respondent State of New York, New York PERB, Petition No. C-001, et al. (1968), pp. 65-82.

[21]Governor's Committee on Public Employee Relations, Final Report (Albany, New York: State of New York, March 31, 1966), p. 24. See also Derek C. Bok and John T. Dunlop, Labor and the American Community (New York: Simon and Schuster, 1970), p. 325.

[22]Friedman, pp. 511-512.

[23]Governor's Committee on Public Employee Relations, p. 24.

[24]Weber, p. xviii.

issues, since, as Rock explains, in the public sector, "the necessary authority may not be delegated to lower-level functional units."[25] Lahne concurs, and points out that bargaining is best conducted when a union confronts a management official who can say "I will" or "I won't" rather than "I can't."[26] When a union must deal with a management that says "I can't," Wellington and Winter fear that "the bargaining relationship may be unstable and volatile," as unions leave the bilateral bargaining relationship in search of persons or organizations that have the authority.[27]

Another argument in favor of large units is based upon the need for what Thompson terms "administrative convenience." He explains that in Philadelphia, where most city employees (all but police, firemen, teachers, and subway workers) are in one unit, it is relatively easy to administer negotiations and to keep key political officials informed on what is happening.[28] In the same vein, Wellington and Winter assert that "unnecessary bargaining costs, increased bureaucracy, diversion of time, and so forth -- ought not be imposed on public employers. The more units there are, the larger these costs are likely to be."[29] Weber agrees that to preserve collective bargaining, the unit structure that

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[25]Rock, p. 1006. For an elaboration on this argument, see the discussion of the relationship between unit determination and scope of bargaining in our review of the literature on "Scope of Bargaining."

[26]Herbert Lahne, "Bargaining Units in the Federal Service," Monthly Labor Review, Vol. 91 (December, 1969), p. 39.

[27]Wellington and Winter, pp. 111-112.

[28]Thompson, p. 19.

[29]Wellington and Winter, p. 108. See also Lee C. Shaw and R. Theodore Clark, Jr., "Determination of Appropriate Bargaining Units in the Public Sector," Oregon Law Review, Vol. 51 (1971), p. 175. On the other hand, the reader ought to recognize that large units are not the only means available for achieving administrative convenience in negotiations and contract administration. Other devices, such as master contracts and coalition bargaining, may achieve the same ends, even with small units. For a discussion of the alternatives, see Section 3.3, below.

minimizes social and economic costs should be adopted.[30]

3.2 Criteria for Unit Determination

The criteria spelled out in the laws and then interpreted by the Public Employee Relations Commission have a direct impact on the question of unit size.

3.2.1 Community of Interest

"Community of interest" has been the major criterion used in both the private and public sector in determining units. Its traditional interpretation has been summarized by Paul Prasow:

> It is my belief that the community of interest among a group of employees must be defined in terms of distinctiveness of function, similarities of job skills, generally the same working conditions, mutual interests, problems, and grievances which might arise. The community of interest of one small group may far outweight (sic) the broad common goals shared with all other employees in the agency. A clear and identifiable community of interest exists when a group of employees constitutes a functionally distinct and homogeneous unit, and where there is a clear similarity of skills, job duties, etc.[31]

Such an approach to this criterion encourages fragmentation, as evidenced by early decisions made by arbitrators dealing with unit determination in the Federal sector. According to Charles Rehmus, these arbitrators, seeking to determine community of interest, were interested in whether a given group of employees worked at the same location, whether they had a common supervisor on that site or nearby, whether they had the same skills or education, whether they took part in an integrated work process, and whether their working conditions were similar.[32]

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[30] Weber, p. xviii.

[31] Paul Prasow, "Principles of Unit Determination: Concepts and Problems," Unit Determination, Recognition and Representation Elections in Public Agencies, (Los Angeles: University of California, Institute of Industrial Relations, 1972), p. 4.

[32] Cited in Thompson, p. 12.

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[30]Weber, p. xviii.

[31]Paul Prasow, "Principles of Unit Determination: Concepts and Problems," Unit Determination, Recognition and Representation Elections in Public Agencies, (Los Angeles: University of California, Institute of Industrial Relations, 1972), p. 4.

[32]Cited in Thompson, p. 12.

The result of this view of community of interest, therefore, has been the proliferation of small units that so many authorities have come to deplore. However, reliance upon community of interest as a criterion in unit determination need not necessarily be a bar to larger units. Where those bodies charged with unit determination have sought to establish large inclusive units, they have done so not by ignoring community of interest but by defining it in a manner that serves their purposes. A Trial Memorandum prepared on behalf of the State of New York in support of a general unit of all state employees (except university faculty and state police) pointed out that "these employees, despite their occupational diversity are a single work force." Noting that salaries, pensions, fringe benefits and personnel matters are determined on a statewide basis," the memorandum concluded that as a result "the employees of the State have a common interest in those matters which are of prime concern in the employment relationship."[33] Though the PERB did not accept the State's request for a single unit, it did accept the logic of the argument in favor of limiting the number of units. As Robert Helsby, PERB Chairman, later explained at a conference sponsored by the Labor-Management Services Administration of the U.S. Department of Labor, state laws should provide criteria which provide for determining "the most appropriate unit," rather than "an appropriate unit."[34] Similarly, the PERC of New Jersey noted that if the employees of a single state facility had a certain community of interest, this "does not negate the possibility of a stronger, broader, and higher level of common interest which threads through various administrative units," while it added that "employee terms and conditions in greatest measure are established by a central authority superior to the local administrator."[35] In like manner, the special Advisory Committee appointed in Michigan asserted that its recommendation of 11 broad units rested upon several considerations. "Of greatest importance was community of interest

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[33]Osterman, p. 17.

[34]GERR, No. 429 (November 29, 1971), B-13.

[35]New Jersey, PERC No. 50.

among employees based on wage or salary level, occupational classification, duties, skills, education and training, and working conditions."[36]

3.2.2 Supplementary Criteria

Broadening the definition of community of interest has been one means to assure larger bargaining units. Providing that other criteria in addition to community of interest be met in unit determination is yet another method that has been suggested by some authorities and implemented in several jurisdictions. Thus, Wellington and Winter suggest that in unit determination there should be three "primary criteria" that ought to "weigh heavily." They propose as primary criteria the "history of separate representation," the "locus of employer authority," and, quite simply, "the goal of avoiding excessive proliferation of bargaining units." While the first of these might well be a bar to developing larger units, Wellington and Winter note that "if other primary criteria indicate the desirability of change ... new units ought to be fashioned." Only as secondary criteria "that may govern only in close cases" do they list "community of interest" and "freedom of organization and representation."[37]

Both Arvid Anderson[38] and Herbert Lahne[39] recommend tying unit determination to the scope of bargaining so that negotiations will take place at the appropriate level in government. Definition of scope would be a prerequisite to unit determination, and the actual determination of units would be decided in that context. Other criteria would be secondary. Since the most important matters for negotiation are increasingly the province of the upper levels of public management, this approach

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[36]Advisory Employment Relations Committee to the Michigan State Civil Service Commission (hereinafter Advisory Employment Relations Committee), Report and Recommendations on Unit Determination in the Classified Civil Service (January 31, 1974), p. 16.

[37]Wellington and Winter, pp. 105-112.

[38]Arvid Anderson, "The Structure of Public Sector Bargaining," in Sam Zagoria (Ed.), Public Workers and Public Unions (Englewood Cliffs, N.J.: Prentice-Hall, 1972), p. 42.

[39]Lahne, p. 39.

would encourage large units or a multi-level approach.

Approaches similar to those outlined above have already been adopted. New York State's Taylor Law recognized community of interest, but it also stipulated that another criterion in unit determination be that "the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate."[40] In accord with the legislature's apparent desire to prevent a proliferation of small units, the New York State Public Employment Relations Board (PERB) set up a relatively small number of inclusive, statewide bargaining units. In the Federal sector, where bargaining policies were first set forth in Executive Order 10988 in 1962, a significant change in unit criteria took place in 1969 when Executive Order 11491 was promulgated. Under 10988, the only criterion specified was "a clear and identifiable community of interest." However, while 11491 retains community of interest, it also mandates that bargaining units must "promote effective dealings and efficiency of agency operations."[41]

Pennsylvania's 1970 Public Employee Relations Act made the avoidance of small units itself a criterion. It stipulates that in unit determination, the state Labor Relations Board must consider community of interest as well as "the effects of overfragmentation,"[42] and in fact that when the state is the employer, "it will be bargaining on a statewide basis unless issues involve working conditions peculiar to a given local government employer." Accordingly, the Board limited the number of bargaining units and (with some exceptions) confined them to

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[40]Taylor Law, New York State Laws Ch. 392 (1967), as amended by Laws Chs. 24, 391, 492 (1969); Laws Chs. 32, 414, 1020 (1970); Laws Chs. 13, 503, 504 (1971); Laws Chs. 26, 818 (1972); Laws Ch. 383 (1973); Laws Chs. 283, 443, 587, 724, 725 (1974).

[41]Tom Stover, "Unit Determination -- The Federal Sector Significant Decisions," Unit Determination, Recognition and Representation Elections in Public Agencies (Los Angeles: University of California, 1972), p. 4.

[42]Pa. Stat. Tit. 43, Sec. 1101.101-1101.2301 (1970).

statewide, occupational categories.[43]

3.3 The Trend Toward Larger Units

Two major approaches have been utilized in the public sector to avoid the problems attributed to small units. In terms of the framework used by Weber (mentioned at the beginning of Section 3.0), one approach is to create large election districts, i.e., large units. The second approach is to broaden the base of negotiations, i.e., negotiate a single agreement that covers more than one bargaining unit.

In New York, in 1968, the PERB divided all state employees, other than university faculty and state police, into five "statewide, inter-departmental units, "each containing related groups of occupations."[44] In New Jersey, the first unit determination by the state's PERC recommended that each of the six New Jersey state colleges be a separate bargaining unit. However, in 1972, it decided that one unit covering all six was appropriate because the units were bargaining with the same employer. PERC's policy has been to deny petitions for local, institutional, or departmental units and to seek units covering all the employees in the state in the same occupational category. Also, PERC has defined occupation quite broadly. In 1972, it dismissed petitions for separate units for employee groups such as nurses, social workers, and rehabilitative counselors, asserting that units "must be only statewide in scope, but also should include all who share a common occupational objective, even though this kind of unit will include a variety of professions."[45]

In Michigan, where the State Civil Service Commission's policies on unit determination had led to 29 units, largely of departmental nature, a special Advisory Employment Relations Committee recommended in January, 1974 "that 11 statewide units be composed of occupational classifications which fall within the following functional categories: Office and Clerical,

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[43]Advisory Employment Relations Committee, p. 12.

[44]Lefkowitz, p. 13

[45]New Jersey, PERC, No. 68 (May 23, 1972).

Technical, Administrative, Operations and Enforcement, Institutional-Support Service, Institutional Medical and Mental care, Institutional-Penal and Rehabilitative Care, State Police Enlisted Officers, State Police Command Officers, Supervisory, Professional."[46] Other states, e.g., Hawaii and Wisconsin, have mandated by statute a limited number of inclusive statewide units.[47]

While many of the reasons advanced by the authorities to support larger units have a promanagement cast (e.g., larger units increase efficiency of bargaining), it would be erroneous to assume that all labor organizations have resisted the trends outlined above. As noted in Section 3.1.1, unions avoid fixed ideological positions on unit determination. As A.L. Zwelding, General Counsel for the American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME), puts it, "The matter is essentially a pragmatic issue."[48] AFSCME's original proposal in New York in 1967 under the Taylor Law was for 12 units that were departmental in scope, a proposal that presumably was based upon AFSCME's awareness of the difficulties it would encounter in representation elections in larger units.[49] On the other hand, in Michigan, where AFSCME represented a unit including most of the employees of the city of Warren, the union opposed an attempt made by a Teamsters Local to carve out a smaller unit for itself.[50]

While the first approach focuses on the election district, the second approach attempts to broaden the negotiation unit to coincide

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[46]Advisory Employment Relations Committee, pp. 2-5.

[47]Hawaii Laws Ch. 171 (1970), as amended Laws Ch. 212 (1971) and Laws Ch. 36 (1973); Wisconsin State Employment Relations Act, Subchapter V of Chapter 111, Bureau of National Affairs Labor Relations Reporter, 60 State Labor Laws 242a-242h(2).

[48]GERR, No. 436 (January 24, 1972), p. AA-2.

[49]Lefkowitz, pp. 7-8, fn. 99.

[50]Morris Slavney, "Models in Unit Determination -- Problems and Considerations -- Major Decisions of the Wisconsin Employment Relations Commission," Unit Determination, Recognition and Representation Elections in Public Agencies, (Los Angeles: University of California, 1972), p. 10.

with the unit of direct impact. "Coalition" bargaining (also referred to as "merger" or "council" bargaining) exists, according to Rock, when "separate bargaining units within a governmental entity bargain jointly with the governmental employer on all agencywide issues."[51] This should be distinguished from "multi-tier" bargaining, which achieves the same end, but which involves a more elaborate unit structure. In coalition bargaining, the bargaining process changes, but the unit structure remains the same. In multi-tier bargaining, the unit structure changes. Two or more levels of units are created, each at a different "tier" in the hierarchy of the public employer's administrative structure. At the highest tier, a representative is selected for the unit which will bargain on agency-wide units. At the lowest level, representatives are selected to bargain on issues of concern to the various units at this level. The most common example of multi-tier bargaining in the public service is the three-tier system that was utilized in the Post Office Department.[52]

Two examples of coalition bargaining by state employees are Oregon and Rhode Island. In Oregon, the legislature mandated coalition bargaining between the state and organizations representing employees in like classifications for the purpose of establishing the compensation plan and other economic benefits which require funding or legislative approval of merit system rules with statewide application. The statute provides that if the unions cannot agree, the organization representing the majority in a classification may enter into an agreement that covers all employees in that class, although the master agreement is not applicable to department or local bargaining issues.[53]

In Rhode Island, coalition bargaining is not mandated by law. The two dominant labor organizations at the state level, both district councils of AFSCME, were persuaded by the State Labor Relations Administrator to negotiate a master contract which significantly eliminated

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[51]Rock, p. 1014.

[52]Rock, pp. 1008-1009.

[53]Oregon Laws Ch. 536, sec. 10 (1973).

the inefficiencies of negotiating over seventy contracts with 14 different unions. The issues negotiated in the master contract relate to wages and other economic policies. "Mini-contracts" are then negotiated with the individual units on local issues.[54]

Two-tier bargaining has been implemented in New York City, where District Council 37 of AFSCME is the exclusive bargaining agent for all mayoral agencies on issues of working conditions and fringe benefits (which are uniform for all employees under the Career and Salary Plan). Other units, smaller in size, bargain over salaries and other conditions of work.[55] In the plan drawn up by the special advisory committee in Michigan,

> organizations chosen in statewide elections will also represent their unit employees on local issues in meetings with department heads or their designated representatives . . . Department heads may meet separately with individual organizations on local issues affecting employees in each unit, or with several or all organizations together on issues affecting employees in several or all units in the department.[56]

In 1967, when the Nassau County PERB asked the NYC PERB if it could establish one unit to represent county employees on "county-wide issues" yet also recognize "smaller craft, departmental, or professional negotiating units which would have jurisdiction over the same employees for . . . . matters that may be peculiar to or best handled by the smaller organization," PERB's counsel replied by citing the Summary of PERB's rules which provided that "the granting of exclusive rights to the majority organization could be combined with recognition of minority organizations," if this were done in such a manner that "each has an

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[54]Preliminary Report on Rhode Island, prepared for U.S. Department of Labor (LMSA) Research Project in progress, "Management's Internal Organizational Response to the Demands of Collective Bargaining." (See footnote 17.)

[55]Rock, p. 1010.

[56]Advisory Employment Relations Committee, p. 22.

independent sphere of interest."[57]

Although coalition bargaining and multi-tier bargaining have some promise in terms of relating unit determination to the scope of bargaining, they are not without disadvantages. Determining which issues should be negotiated in the large unit and which should be left to local discretion may be a difficult problem. Additionally, if coalition bargaining is used, the union which dominates the coalition may act contrary to the interests of employees represented by other unions. Similar problems exist with multi-tier bargaining. In the case of New York City, for example, District Council 37 of AFSCME began to bargain city-wide on pensions after it achieved representative status for 51 percent of the city's employees covered by the Career and Salary Plan. This raises the question of whether other unions, which may represent 10 or 20 percent of the total, have a fair voice in negotiations over the issues considered by this city-wide unit.

It also should be clear that the coalition or multi-tier approach does not eliminate small units. It simply limits the scope of bargaining of the small units. If, as in New York City, the small units still bargain over wages and salaries (the items that concern most managers, because of the possibility of competition between these units for the best settlement), the problems of small units may not have been solved.

3.4 Supervisors

The question of the relationship of supervisors to unit determination is one of the most troublesome problems in public sector labor relations. There is little empirical research on which to base judgments, and the experience of the private sector is of little help. Furthermore, the public sector question is complicated by the fact that individuals who by some standards are considered to be supervisors (e.g., officers in police and fire departments, principals in schools, nurses, etc.) have been included in bargaining units with the employees they "supervise" for many years.

One must begin this analysis with a definition of supervisor. The Taft-Hartley Act amendments to the National Labor Relations Act (NLRA) excluded "supervisors" from the definition of "employee," thereby denying

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[57]Cited in Friedman, p. 518.

"supervisors" in the private sector the right to bargain.[58] The definition now offered in the NLRA is:

> "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."[59]

While this may clarify the issue for the private sector, some authorities argue that it is an inappropriate definition of the supervisory role in the public sector.

As Wellington and Winter point out, the title of "supervisor" may be used rather loosely in the public sector, and may actually overstate the responsibility involved. Supervisory authority in the public sector is limited by the presence of an external authority (usually statute) that sets hours and conditions of work. Many of the traditional duties of the supervisor in the private sector, such as hiring, discharge, and discipline, are limited by civil service regulations or performed by personnel agencies.[60] This leads to the arbitrary (and hypothetical) definition of supervisory employee suggested in the Report of the Advisory Employment Relations Committee to the Michigan Civil Service Commission: "'all personnel at the 09 level or higher'."[61]

Because of these fundamental problems of definition, policy-makers deciding unit determination questions in the public sector face two

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[58] NLRA, Secs 2(3), 2(11), U.S.C. Secs. 152(3), 152(11) (1970). Prior to the Taft-Hartley Act, the NLRA contained no definition of "supervisor," and the National Labor Relations Board had established some units of supervisors. Indeed, in the construction trades, it was traditional practice to include foremen in the bargaining unit. See Joel Seidman, The Hawaii Law on Collective Bargaining in Public Employment (Honolulu: Industrial Relations Center, College of Business Administration, University of Hawaii, October, 1973), p. 18.

[59] U.S.C. Sec. 152(11) (1970).

[60] Wellington and Winter, p. 113.

[61] Advisory Employment Relations Committee, p. 19.

problems. Assuming that supervisors have the right to bargain,[62] how are they to be distinguished from employees at lower levels in the civil service system (the employees they supervise), on the one hand, and employees at higher levels, e.g., "managerial" employees, on the other hand? This is particularly troublesome because most public sector statutes tend to permit supervisory employees to bargain, but deny that right to employees deemed to be "managerial" or "confidential."[63]

The Final Report of the Assembly Advisory Council on Public Employee Relations in California argued that the NLRA definition of "supervisor" was unsatisfactory for the public sector and would not help to solve these knotty problems. Instead, they recommended adopting the definition used in the State of Washington:

> "any person having substantial responsibility on behalf of management regularly to participate in the performance of all or most of the following functions: employ, promote, transfer, suspend, discharge, or adjudicate grievances of other employees, if in connection with the foregoing, the exercise of such responsibility is not of a merely routine nature but requires the exercise of independent judgement."

To the layman this may not seem to differ significantly from the definition in the NLRA, but the Advisory Council believed that it had the advantage of being "functional, i.e., [it] identifies those who actually supervise, as distinguished from those who carry the title but do not perform supervisory duties."[64] Given the definitional problem in the public sector, one can understand why such a distinction is important. In any event, assuming

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[62]This issue is not settled in the public sector. In a 1972 survey of 33 public sector bargaining statutes, 13 denied supervisors the right to bargain by excluding them from coverage. See Ogawa and Najita, pp. 8-9, 70-74. The Advisory Commission on Intergovernmental Relations has argued that supervisors be excluded from bargaining, and some authorities support this position. See Shaw and Clark, p. 170.

[63]For references to alternative statutory definitions of these terms see Ogawa and Najita, pp. 8-10. For a review of the literature on "managerial" and "confidential" employees, see Shaw and Clark, pp. 170-171.

[64]Final Report of the Assembly Advisory Committee on Public Employee Relations, (hereinafter Assembly Advisory Committee), Benjamin Aaron, Chairman, (Los Angeles: University of California at Los Angeles, Institute of Industrial Relations, 1973), pp. 96-97.

that an adequate definition is devised, one still must face the basic unit questions: (1) should supervisors be allowed to organize in the same units as employees that they supervise; and (2) if they are in a separate unit, should they be allowed to be represented by the same union that represents their supervisees?

This issue is still debated, and it often becomes an important policy issue because large organizations representing municipal employees (e.g., the National Education Association and the International Association of Fire Fighters) contain substantial numbers of employees who may be considered "supervisory."[65] Thus, any policies which either: (1) excluded "supervisors" from the same bargaining unit, or (2) denied an employee organization the right to represent both "supervisors" and those employees they supervise, would seriously deplete the membership of these organizations.

3.4.1 Arguments for Inclusion

Two arguments traditionally have been used for inclusion of supervisors in the same bargaining units as those employees they supervise.

First, as indicated earlier, there is a substantial body of opinion that "supervisors" in the public sector are not really "supervisors" in the private sector sense of that term. As suggested earlier, many public sector supervisors do not have many of the responsibilities assigned to a private sector supervisor. Thus, the argument goes, they should be permitted rights not given to them in the private sector.[66]

Second, there is the basic argument of community of interest, or to use the typology developed by Arnold Weber and discussed earlier in our discussion of unit determination, the concept of "informal work groups."[67] Because supervisors lack substantial managerial authority, they have been more allied with the employees than with management and therefore have a

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[65] Jack Stieber, Public Employee Unionism (Washington, D.C.: The Brookings Institution, 1973), pp. 143-146.

[66] See Thompson, p. 17, for references to this argument.

[67] Weber, p. xviii.

history of association that should be honored in the formal certification.[68] For example, W. Howard McClennon, president of the International Association of Fire Fighters, in testimony before Congress on proposed legislation on public sector collective bargaining, argued that in the case of the firefighters, officers and men work closely together on the job and that this relationship should be preserved in their collective bargaining activities as well.[69] From the union point of view, separating supervisors means a loss of membership with its inherent loss of dues and power. This loss must be balanced against the possible tensions and conflict of interest that may result from keeping supervisors in the same unit.

Pendleton summarizes these arguments in the following way: (1) there is a necessary community of interest concerning goals and objectives in government agencies; (2) separation of supervisors from their subordinates causes more division than unity and is therefore disruptive of the collective bargaining process; (3) supervisors are entitled to the same rights as the rank and file; and (4) supervisors have a historical relationship with their subordinates that should be honored.[70]

3.4.2 Arguments for Exclusion

The arguments for exclusion of supervisors are centered around two major factors: (1) the importance of supervisors on the management side in the actual collective bargaining process; and (2) the possible conflict of interest from their inclusion in the unit.

Wellington and Winter, even though they admit that public sector supervisors are different from their private sector counterparts, nevertheless contend that the supervisor has a critical role in both negotiating

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[68]This argument of "community of interest" was made by Dr. Helen D. Wise, then president of the National Education Association, in her testimony in support of H. R. 8677. See U.S. Congress, House Hearings on H. R. 8677 and H. R. 9730 before the Committee on Education and Labor, Special Subcommittee on Labor (Washington, D.C.: U.S. Government Printing Office, 1974), pp. 35-36.

[69]Ibid., p. 45.

[70]Edwin C. Pendleton, "Collective Bargaining in the Public Sector: Supervisors." Reports: (Honolulu: Industrial Relations Center, University of Hawaii, December, 1970), pp. 647-648.

and implementing collective bargaining agreements that would be lost if supervisors were to become part of the bargaining unit. Management needs qualified personnel to oversee the implementation of the contracts. In order for supervisors to perform this function they must identify with management, which would be difficult if they were part of the bargaining unit.[71]

A major drawback to inclusion of supervisors is the possibility of conflict of interest arising out of the grievance process. Some authorities argue that supervisors cannot effectively handle grievances if they are in the same unit or represented separately by the same organization.[72] Proposed Federal Legislation, HR 8677, requires separate units for supervisory personnel with the exception of firefighters. Supervisors in public safety and in education can be included in the nonsupervisory units if a majority in both categories vote for the inclusion. In the case of professional employees, the requirement is the same, namely that a majority of professionals and nonprofessionals must vote for inclusion in one unit; otherwise there would be separate units.[73]

Given the diversity in these two professions, public safety and education, it is difficult to predict the kind of unit configuration they will select. A study by the National Education Association in 1968 and 1971 revealed that feelings are mixed on the question of separate units for supervisory personnel in the field of education. In 1968, 42.6 percent of those teachers polled favored the same units and 41.4 percent favored separate units. By 1971, a larger percentage favored separate units, 45.8 percent vs. 32.8 percent for the same units. In large- and medium-sized districts,

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[71]Wellington and Winter, pp. 113-114.

[72]This argument is made by Reginald Alleyne, "Supervisors and Managerial Employees in Public Sector Representation Units: Random Comparisons with the Private Sector," Unit Determination Recognition and Representation Elections in Public Agencies (Los Angeles: University of California, Institute of Labor Relations, 1972), pp. 49-50; see also Gilroy and Russo, p. 33; and Seidman, pp. 18-21. For an opposing view on this subject, see The Supervisor in the Bargaining Unit, Symposium Proceedings, Hawaii State IPA Advisory Committee, December 10, 1973, Honolulu, Hawaii (Honolulu, 1974).

[73]U.S. House of Representatives, pp. 3-8.

separate units were favored, while the same units were preferred in small districts, especially in the Southeast and West.[74]

Stieber suggests that the union position on exclusion or inclusion of supervisors depends on how many supervisors they have in the union. AFSCME, with 3.6 percent of its membership comprised of supervisors, favors separate units, but believes supervisors should be permitted to belong to the same unions as nonsupervisors.[75] Unions with private sector backgrounds do not consider supervisors to be a major issue because they have few supervisors, and locals are free to determine their own policy with regard to inclusion or exclusion.[76] However, many associations which have a substantial supervisory membership consider this an important issue. The Assembly of Governmental Employees, for example, believes that the resolution of this problem should be decided at the bargaining table.[77]

Because of the diversity of interests in the various unions, some states have begun to solve this problem on an almost case-by-case basis. For example, the Assembly Advisory Council in California recommended that police and firefighters be permitted to remain in their traditional bargaining units. They base this argument on their belief that police and fire departments are "paramilitary" in nature (as distinguished from other public employee departments), and that the definition of "supervisor" therefore will be applied more strictly. They further argue that a decision by the Wisconsin Employee Relations Commission upheld this notion when it declared that fire captains and lieutenants were nonsupervisory.[78] While this solves the problem for police and fire departments, it hardly solves the questions raised by teachers and nurses, to name only a few of the

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[74]NEA Research Division, "Teachers and Administrators: Same or Separate Units?" NEA Research Bulletin, Vol. 49 (October, 1971), pp. 77-79.

[75]Stieber, p. 140.

[76]Ibid., pp. 141-142.

[77]Ibid., pp. 143-144.

[78]Assembly Advisory Committee, pp. 98-99.

groups that are likely to be affected.[79] It is therefore interesting to note that the Assembly Advisory Committee places emphasis on the fact that their recommendations will disrupt "only to a minimum degree" the traditional bargaining relationships in police and fire departments. It also is interesting to note that the Committee appears to recommend (although reluctantly) that where supervisory employees already are part of an existing bargaining unit, they be permitted to be "grandfathered in" to such units, "until or unless the Board determines that such units are not appropriate."[80] One can only conclude that the Committee was seeking a pragmatic solution for a difficult problem.

Putting the recommendations of the California Assembly Advisory Committee in another light, one might suggest that they simply recognized the strength (and/or utility) of existing bargaining relationships, and regardless of the arguments made for or against inclusion of supervisors, they were reluctant to disturb these relationships. In that sense, they were giving substantial weight to the existing bargaining environment in reaching their conclusion. That means that another state, with a different bargaining environment, could decide the question in a different manner, depending on their opinions of the merits of the issue.

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[79]For a discussion of the special problems facing nurses, see Daniel H. Kruger, "The Appropriate Bargaining Unit for Professional Nurses," Labor Law Journal, Vol. 19 (January, 1968), pp. 3-11.

[80]Assembly Advisory Committee, p. 99.

4.0 Limitations of the Findings

The major limitation of the findings on the issues involved in unit determination is the absence of empirical evidence. As indicated in Section 3.0, most of the literature consists of: (1) the opinions of practitioners, supported by their own experience; or (2) arguments made by academics who rely on the experience of practitioners to support their arguments. For example, on the question of unit size and the criteria for unit determination, there is frequent reference to the problem of proliferation (particularly in New York City), but there is little empirical evidence to support the notion that proliferation (in general) leads to undesirable consequences.

The prevailing opinion expressed by management representatives on the question of unit size is that large units are preferable to small units. The arguments are based on assumptions about problems allegedly associated with small units: (1) managerial inefficiency; (2) "whipsawing;" and (3) the threat to uniform application of classification and pay plans, civil service rules, and the like. In spite of this conventional wisdom, however, we indicated in Section 3.0 that new research (not yet completed) may challenge these traditional arguments.[81] Using data from states, this research yielded examples of the disadvantages traditionally associated with small units in states with large units; conversely, it reported examples of states with small units that operated without these disadvantages.

A second limitation on the findings on unit determination is that, to a great extent, the literature has been written by and for management. The position of employee organizations is represented infrequently. One reason for this is that employee organizations approach the unit determination issue from a pragmatic point of view, i.e., their position on unit determination may vary from case to case, depending on which position will enable them to represent a unit of employees. Although understandable, the infrequency of articles representing the employee organization point of view is unfortunate because it means that most of the literature focuses primarily on questions of interest to management.

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[81] U.S. Department of Labor (LMSA) Research Project in progress, "Management's Internal Organizational Response to the Demands of Collective Bargaining." (See footnote 17.)

5.0 Conclusions and Policy Recommendations

The issue of unit determination is one of the most important in public sector labor relations. Both unions and management have a stake in public policy in this area since that public policy establishes the "rules of the game." For management, it determines whether they will be able to have a unit structure which is conducive to their view of an effective and efficient labor relations structure. For employee organizations, these "rules" determine (to a large extent) which of the various competing unions will represent public employees.

Given the importance of this issue, it is unfortunate that the findings suffer from such substantial limitations, as indicated in Section 4.0. Nevertheless, we feel that the emerging research in this area offers some hope for conclusions and suggests some policy recommendations.

Although still subject to further examination, the most important conclusion which is emerging is that much of the conventional wisdom about unit determination may be in error. The latest research on the subject suggests that the number and size of units may be important only when considered in the context of the total labor relations environment in a given jurisdiction. For example, it is possible that a large number of small units may be effective in a jurisdiction that is dominated by a single union, or where coalition bargaining is effectively implemented.

One policy recommendation flowing directly from this conclusion is that the policy-maker must consider that total labor relations environment before making decisions about unit determination. It suggests, further, that management begin to take the more pragmatic approach that unions have taken and consider, on a case-by-case basis, what is most appropriate in a given jurisdiction to achieve specific policy objectives. This recommendation applies equally to the question of supervisors. As we noted in Section 3.4, some policy-makers (notably, the Assembly Advisory Committee in California) had essentially a pragmatic approach to this subject. They were accepting the fact that supervisory personnel already were part of several existing bargaining units, and they were not prepared to recommend sweeping changes that would disrupt existing bargaining relationships. In short, they took the existing environment into account before making pre-

scriptions on the issue of unit determination. From the evidence in this review of research, it would appear that that Committee was following a sound strategy which could be generalized and recommended to other policy-makers.

D

TAB D

HOW A UNIT IS DETERMINED

UNIT DETERMINATION

Under Section 3541.3 (a) the EERB has the authority "to determine in disputed cases, or otherwise approve, appropriate units."

Section 3545 (a) states "In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district." (Emphasis ours)

Since the EERB may interpret this language by applying private sector or other public sector precedent, we have included a comparative review of the private and federal sectors.

AUTHORITY

National Labor Relations Act

Under Section 9(b) of the Act, the National Labor Relations Board is granted authority, subject to certain limitations, to "decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof."

Executive Order 11491

The Assistant Secretary of Labor for Labor Management Relations (A/SLMR), under Section 6 (1) of the Order, is authorized to determine an appropriate unit which "may be established as a plant, installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations."

REVIEW

NLRA

While other areas of NLRB decisions are subject to judicial review, there is no way in which a unit determination of the NLRB can be directly challenged by court action unless the determination violates the terms of the Act itself. Indirectly, one could obtain judicial review by refusing to bargain, since bargaining orders are reviewable by the courts. This same approach could

be taken under SB160. However, in practice, the courts have been very reluctant to disturb NLRB unit determinations.

E.O. 11491

Decisions of the A/SLMR are subject to review by the Federal Labor Relations Council (FLRC), subject to the FLRC's rules limiting review to cases "where there are major policy issues present or where it appears that the decision was arbitrary or capricious." Since Federal labor management relations are based on an Executive Order rather than a statute, judicial review of decisions by the A/SLMR and the FLRC are not available.

APPROPRIATE UNIT

NLRA

In approaching any unit question, the Board has construed the statutory language to mean that it need not determine "the ultimate unit, or the most appropriate unit; the Act requires only that the unit be 'appropriate'."

E.O. 11491

It has been determined that the Order requires only that the unit be appropriate, not the ultimate or most appropriate unit.

FACTORS IN UNIT DETERMINATION

NLRA

In resolving the unit issue "the Board's primary concern is to group together only employees who share a similar community of interest." Community of interest criteria commonly considered by the NLRB include:

1. similarity of method of wages or compensation
2. similarity of hours of work
3. similarity of employment benefits
4. similarity of supervision
5. similarity of qualifications, learning, or skills
6. degree of integration or interchange of work functions
7. physical location
8. similarity of working conditions
9. frequency of contact between employees.

Other factors which influence the NLRB determination of an appropriate unit are: extent of union organization, desires of the employees, bargaining history and employer's organizational structure.

Extent of Union Organization was an especially significant factor in determining appropriateness prior to 1947. However, Taft-Hartley provided that "in determining whether a unit is appropriate...the extent to which the employees have organized shall not be controlling." The Board continues to give a certain amount of weight to the extent of organization in cases where there are also other substantial factors on which to base its unit determination.

Desires of the Employees become a very important, if not central, factor in situations where there is a decision to be made between two or more equally appropriate units. In cases involving craft unit, departmental unit, professional inclusion, or unit severances, the Board utilizes self determination elections (Globe Elections) to measure desires of the employees.

Bargaining History is used as a factor to determine the success of bargaining patterns and thus the appropriateness of a unit. NLRB has been reluctant to disturb existing units, however established, when bargaining has been successful over a period of time. But it will not afford such weight when the history runs counter to well-established Board policy.

E.O. 11491

The Order requires that to be appropriate a unit must (1) ensure a clear and identifiable community of interest among the employees, and (2) promote effective dealings (a factor not included under SB160) and (3) promote efficiency of agency operations.

Community of interest criteria are factors of concern to both union and management. The following include some of the major criteria to be utilized in determining community of interest:

1. Comparison of the work, skills, training and education of the employees involved.

2. Where is the work performed?
   a. The geographic proximity
   b. The separateness among the employees concerned

3. How are the employees supervised?
   a. By whom?
   b. The extent of common supervision.
   c. The extent of different supervision among the employers concerned.
   d. Look at both immediate and overall supervision.

4. Integration of the work functions.
   a. Do employees work together?
   b. Is their work completely separate and unrelated?
   c. Are the work functions dependent upon each other?
   d. Degree of interrelation and overall supervision.

5. Where do the employees fit in the agency organization?

6. Compensation and benefits.
   a. Salary vs. hourly payments.
   b. Time of payments.
   c. Commonality of benefits.

7. Extent of interchange among employees affected.

8. Extent of transfer among employees affected.

9. The existence of promotional opportunities or career ladders.

10. The area of consideration for promotion.

11. Inclusiveness of unit sought.
    Are any employees similarly affected and performing the same types of work excluded from the proposed unit?

12. Reductions in force.
    a. Are any employees involved in the same area of consideration?
    b. Different area of consideration?

13. Hours and days of employment.
    a. Similarities?
    b. Differences?

14. Similarity or differences in facilities.
    a. Locker rooms.
    b. Time clock.
    c. Eating.
    d. Parking.

15. Extent of day-to-day contact among employees concerned.

16. Grievance procedures.
    a. Same?
    b. Different?

17. Past history of labor relations.
    a. Were the employees combined in prior dealings?
    b. Were they separated in past deals?
    c. Why?

<u>Effective dealings</u> requirements necessitate looking at the following issues:

1. At what level will negotiations take place?
   a. Is there sufficient authority at that level to permit meaningful negotiations to occur?
   b. Will constant approval be required from higher levels of authority?

2. At what point will grievances be processed?
   a. Is there sufficient authority at that point to permit settlement?
   b. Will constant approval be required from higher authority?

3. Will the unit contribute to duplication or multiplication of separate negotiations with different employee groupings and the same management?

4. Whereas dealings with a single unit of employees possessing similarities of skills and training promotes effective dealings, will exclusion of employees with similar skills and training lead to fragmentation, whipsawing, and multi-negotiation?

5. Will the unit include all employees with functional job interrelationship and integration?

6. Does the proposed unit include all employees who have common supervision?

7. Whereas dealing with all employees who share a commonality of employee conditions and benefits, grievance procedure policy, promotion policy, intergroup transfer and interchange in a single unit promotes effective dealings, will not dealing with separate groups about the same problems promote ineffective dealings?

8. Does the history of bargaining show that dealing with a unit in question promotes ineffective dealings?

Efficiency of Agency Operations requires that the following be considered:

1. Will promotions, transfers, or interchange occur outside the unit so as to adversely affect efficiency of operations?

2. Does the proposed unit fragment existing units?

3. Does the proposed unit create residual or fringe groups?
   a. Do these groups have a community interest with employees on the proposed unit?
   b. Would the exclusion of these employees impair efficiency of operations?

4. Does the proposed unit contain groups of employees with clearly distinct communities of interest, missions, etc?
   a. Would their inclusion in a single unit impair effective dealings and efficiency of agency operations?

5. Will the proposed unit promote stability or instability of labor management relations?

6. How does the proposed unit conform to the organizational structure of the agency?

7. What would management consider to be the most appropriate unit to promote effective dealings and efficiency of operations?

8. Does past bargaining history reveal that the unit would or would not promote efficiency of operations?

SUPERVISORS AND MANAGERIAL EMPLOYEES IN PUBLIC SECTOR REPRESENTATION UNITS: RANDOM COMPARISONS WITH THE PRIVATE SECTOR

Reginald H. Alleyne, Jr.

One of the many interesting aspects of decision-making in public sector labor relations disputes is to observe how labor and management use the National Labor Relations Act(NLRA). From its inception as the 1935 Wagner Act, the NLRA has expressly excluded federal, state, and local units of government from its coverage. Despite this explicit exclusion of public sector entities, both public employers and unions representing employees in public sector disputes frequently cite National Labor Relations Board and court decisions interpreting the National Labor Relations Board and court decisions interpreting the National Labor Relations Act. In these cases, I have found that two arguments may be used by management or by labor when confronted with the issue of National Labor Relations Act precedents and their possible application to analogous issues arising in the public sector. Argument number one is: The NLRA precedent is analogous and should therefore be followed in the public sector. Argument number two is: The NLRA precedent is analogous but decisions interpreting the NLRA are not binding upon public sector labor relations agencies.

I have witnessed the same party to a dispute before our Commission use argument number one on one occasion and argument number two on another occasion involving a different issue. This is fair advocacy, but in those instances I can never resist reminding a party that not very long ago we heard a different argument.

This raises questions concerning the propriety of using NLRA precedents in public sector labor relations disputes; when, and under what circumstances if at all, should they be used? Obviously, public sector agencies concerned with employee relations are not bound by the comparable decisional law in the private sector. Accordingly, it would be erroneous to conclude that all of those private sector decisions should be followed by a public sector agency. It would be equally erroneous, I think, to entirely ignore the decisions construing a statute which has existed for three and a half decades, and which now is the source of 37,212 cases flowing annually into NLRB offices around the country. Like so many issues in the law, the answer lies somewhere between two extremes.

Private sector decisions as precedents in public sector disputes is a fascinating issue, with jurisprudential overtones, but this is not the occasion for its full exploration. While that is true, I think the subject of representation units is one where some differences and some similarities which exist between public and private sector labor-management relations is sharply manifested. I should like to focus on another phase of the unit subject: the matter of some of the consequences flowing from a supervisory, managerial, or professional status. Here, some differences and similarities between the bargaining process in the public and private sectors are particularly conspicuous. If nothing more, by making comparisons we are aided in our understanding of the public sector aspects of the subject.

Supervisors

First, supervisors. As your outline notes, both the NLRA and the Los Angeles County Employees Relations Ordinance define a supervisor. If you examine the language in Section 3(r) of the Ordinance and compare it with Section 2(11) of the NLRA, you will quickly conclude that the Ordinance's definition of supervisor was lifted almost verbatim from the NLRA's definition of supervisor.

You may make this comparison by observing the similarities between the two definitions. The term "supervisor" in the NLRA means:

> any individual having authority, in the interest of the *employer*, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The definition of "supervisory employee" from the Los Angeles County Employee Relations Ordinance reads:

> any employee, having authority to exercise independent judgment in the interest of the *County*, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(3) of the National Labor Relations Act excludes supervisors from that Act's coverage. The Act's definition of employee provides among other things, that the term "employee," "shall not include...any individual employed as a supervisor..."

The Private Sector Supervisor

The National Labor Relations Act definition says:

> the term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

Note that the supervisory exemption appears in the same section of of the Act which excludes domestic workers, agricultural workers, and other powerful and vested interests, from the definition of employee, and hence from the Act's coverage.

The supervisory exemption did not appear in the original Wagner Act, but was added by the Taft-Hartley amendments in 1947. Until that time, supervisors enjoyed the same kinds of protection now enjoyed by nonsupervisory employees under the NLRA. They were free to vote in representation elections, free to be part of bargaining units, and they could not be discharged or otherwise discriminated against because of their union activity.

This gives us some insights into the tensions which this issue evoked. The Wagner Act was, to say the least, not popular with employers. Once it passed, most employers probably felt that they would at least not have to contend with their supervisory personnel organizing, petitioning for NLRA elections, and demanding the right to bargain with the hand that fed them, that gave them supervisory authority, and which, as a result, conferred upon them the status of representatives of the employer class. These employer attitudes were converted to legal action in the 1946 Supreme Court case of Packard Company v. NLRB.

In that case, 1,100 foremen who supervised 32,000 rank-and-file employees at the Packard Motor Car Company sought to organize as a unit of the Foremen's Association of America, an unaffiliated organization which represented supervisory employees exclusively. The NLRB held that a unit of foremen was appropriate. The Foremen's Association subsequently won a representation election and asked the employer to bargain. When the company refused, the Association subsequently won a representation election and asked the employer to bargain. When the company refused, the Association filed a refusal to bargain charge against the employer. The Packard Company conceded that the foremen had a right to organize, but vigorously denied that the Act compelled them to recognize the union of foremen. The Packard Company's argument in support of that proposition was ingenious. They relied upon the Wagner Act's definition of employer--not the statutory definition of employee, but the statutory definition of employer. That definition, contained in Section 2(2) of the Act--which you will find at page 6 of Mr. Tamoush's outline--reads in part:

> The term 'employer' includes any person acting in the interest of an employer directly or indirectly....

The employer reasoned that this language lifted the foremen out of the employee class and into the employer class, inasmuch as foremen act "in the interest of [their]

employer...." The Supreme Court rejected this ingenious bit of semantics and held that all employees act in the employer's interest. Applying that finding to the employer's argument, it would have followed that all employees were employers and not employees--an absurd result. Finally, the Supreme Court relied quite simply on the absence of explicit language in the NLRA excluding supervisors from the Act's coverage. Said the Court:

> /T/here is nothing in the Act which indicates that Congress intended to deny its benefits to foremen as employees, if they choose to believe that their interests as employees would be better served by organization than by individual competition.

Thus, it was held that the Act did not exclude supervisors from its coverage.

Three Justices, Douglas, Burton, and Chief Justice Vinson, dissented. They felt that the Wagner Act necessarily excluded supervisors from coverage, notwithstanding the Act's silence on the matter. They reasoned that the majority holding would have to be applied to unions of company presidents and vice presidents. But the court majority, without elaborating, stated in response that there would be obvious and relevant differences between a unit of 1,100 foremen and a unit of corporate officers elected by the board of directors.

Now, so far as I know, corporate vice presidents and presidents rarely if ever seek the aid of the NLRB to achieve the goal of organizing for bargaining purposes. I suppose one reaches a point in the corporate hierarchy where the management function is so clearly identifiable as such that one is indeed describing the employer and not the employees. Those who work at that level in the private sector probably suffer no ambivalent feelings of "divided loyalty" between the workers and the employer. They are the employer, and no doubt think of themselves exclusively as such. If they organized to bargain with their "employer," they would find themselves bargaining with themselves.

This point might be kept in mind when, momentarily, my remarks are directed at the consequences of a managerial status in the public sector, particularly in Los Angeles County government. For now, what was the reaction to the Supreme Court's decision in the Packard Company case, holding that a unit of foremen was appropriate and that the employer was bound to recognize the union representing those

employees even though they were supervisors by today's statutory standard?

The Supreme Court was never given the opportunity to state how far up the corporate ladder one might move before becoming ineligible for the National Labor Relations Act's protective cloak of the right to organize and freedom from discrimination on account of the exercise of that right. In 1947, the year after the Packard Company case was decided, the Taft-Hartley Act amendments, among other things, explicitly removed supervisors from the National Labor Relations Act's coverage. Thus, in the private sector, where the NLRA is applicable, employers need not recognize a union of supervisory employees; employers may discharge with impunity supervisors who engage in union organizing activity. At the same time, though, Section 14(a) of the NLRA allows a supervisor to become or remain a member of a labor organization. But this appears to mean that passive, card-carrying union membership for supervisors is permissible. Anything beyond that in the way of organizing activity is unprotected activity for which the private sector supervisor may be discharged or otherwise disciplined. Further, in the private sector a unit of supervisors need not be recognized, and a unit of rank-and-file employees which included supervisors in most cases would be deemed inappropriate.

There are other interesting consequences flowing from a private sector supervisory status, but before discussing those I should like to take up the matter of the consequences of a supervisory status in the public sector. I hope to note those supervisory consequences which are peculiar to the public sector and then discuss those consequences which are common to both the private and public sectors.

The Public Sector Supervisor

Most public sector employee relations laws do not, as does the NLRA, exclude supervisors from coverage. I think our County Ordinance is probably typical. Its Section 3(f) definition of employee, unlike the NLRA's definition of employee, does not exclude supervisors. Indeed, it includes practically all County employees.

> "Employee" means any person employed by the County in a position in the classified Civil Service.

To find out who is in the County classified Civil Service, simply look at Article IX, Section 33 of the County Charter and see who is not in the classified Civil Service. Simply put, all County employees who are not in are out. Unclassified County employees are elected officials, like the Sheriff, District Attorney, and the Assessor, and one or two of their deputies or assistants. Also, under the Charter, members of commissions like our Employee Relations Commission and the Civil Service Commission are unclassified; school superintendents, principals and teachers are unclassified. All other County employees not so designated as classified are unclassified, notwithstanding their rank.

So, the definition of employee in the Ordinance is much broader than the comparable definition in the National Labor Relations Act. Supervisors in the County then--and I obviously do not mean the County Board of Supervisors--unlike those in the private sector, may not be discharged or otherwise disciplined because of their union activity, and the County, unlike a private sector employer, may become obligated, as it has in some instances, to recognize a unit composed of supervisory personnel. But in establishing employee representation units, Section 8(c) of the Ordinance admonishes that "supervisory employees shall not be included in a unit with...nonsupervisory emloyees unless /the/ supervisory employees are in the same classification with nonsupervisory employees."

This section appears to permit mixed units of both supervisory and nonsupervisory personnel if the employee classifications are the same. In the County, we have not had much experience with attempts to establish units with both supervisory and nonsupervisory personnel of the same classification. In cases where representation of supervisors and nonsupervisors is sought, either the union has sought two units, one supervisory, the other nonsupervisory, or the Commission has determined, over the union's objection, that separate units were appropriate. I believe the County always takes the position that supervisors and nonsupervisors should not be in the same unit, even when the classifications are the same.

I can think of a number of policy reasons why it would not be desirable to have supervisors and nonsupervisors in the same unit. For example, in that instance, a grievance filed against a supervisor in the bargaining unit might present the union with an embarrassing situation. Perhaps, though, a union might reason that grievances against a supervisor member of the bargaining unit would be less likely to take place. This, on the other hand, is another reason why the County might properly resist the mixed unit.

Like so many contested labor relations issues, this one is not one-sided. There are some problems with the separate supervisory-nonsupervisory units. For example, some bargaining tensions arise in Los Angeles County's separate supervisory-nonsupervisory units because of the conflicting desires of some unions and the County on the question of tying together supervisory and nonsupervisory salaries. The unions sometimes want the salaries of the classifications in a nonsupervisory unit to stay within a certain number of salary schedules of the comparable salaries in the supervisory unit. I have found that the County generally does not want to be wedded to the formula proposed by the union, or, for that matter, to any such formula. This, of course, is legitimate bargaining on both sides--assuming good faith--and some form of compromise is usually worked out. At times, though, the compromise comes not without considerable anguish and delay, when, for example, neither the nonsupervisory group nor the supervisory group has reached an agreement; the nonsupervisory unit wants to see how the supervisory unit fares, and the supervisory unit is interested in the outcome of the nonsupervisory unit's bargaining. All well and good, unless, as is sometimes the case, one set of negotiations is on its way to protracted mediation and protracted fact-finding. In these instances, that problem is compounded and the pressures become most intense when the bargaining approaches and goes beyond the date beyond which negotiated salary agreements will not have an effective date beginning the first day of the fiscal year.

These are merely examples of problems involving supervisory personnel which are unique to public sector bargaining units. Obviously, in that category there are many others which the parties will have to contend with from time to time.

Apart from the question of whether supervisory and nonsupervisory personnel of the same classification should be placed in the same unit, a more serious question is whether, as a matter of legislative policy, supervisors in the public sector should be afforded any collective bargaining rights. Why, in this connection, should public sector practices differ so radically from private sector practices?

At one time in our labor-management relations history, organizational activity by supervisors was prevalent, particularly in the maritime industries. Both the decision of supervisors themselves to attempt organizational efforts and the general policy question of whether supervisors should be permitted to organize were influenced by a "loyalty" criterion.

Supervisors who felt that their primary allegiance was to management tended not to organize; those employers who felt that way--no doubt most--also felt that the law should not protect supervisors in their organizing efforts. We see similar tensions today in the area of white-collar worker organization.

Certainly, the foremen in the Packard Company case were examples of the other side of the coin. These men resolved their "divided loyalty" dilemma in favor of allegiance to their subordinate workers. And as we have already noted, Congress, by removing supervisors from the NLRA's coverage, finally decided the question in favor of the allegiance-to-management view.

In the public sector, it has been noted that a supervisor does not have the same kind of authority that a supervisor in the private sector possesses; that in the public sector the discharge and discipline functions are left untimately to decision-makers far removed from the worker's immediate supervision--a civil service commission, for example. Further, in the public sector, broad policy questions on matters like salaries are not decided by managers, but by law-making bodies clearly removed from management. It has apparently been concluded in most units of government passing legislation on the matter that these distinctive aspects of public sector employee relations warrant a treatment of supervisors and managers which differs drastically from private sector policies. Whether these distinctive features warrant a departure from the private sector policy of excluding supervisors from statutory protection and from bargaining units is problematical. The issue is best analyzed by examining, first, some supervisory-status consequences which are common to both the public and private sectors, and then the question of who is a supervisor.

At first blush, it might seem easy to conclude that there are no supervisory-status consequences which are common to both the public and private sector, inasmuch as supervisors are not covered by the NLRA and are covered by most comparable public sector legislation.

Common Public-Private Sector Consequences

Common consequences are few, and relate generally to a single general topic--the question of who is responsible for an unfair labor practice. An unfair labor practice under virtually all labor relations legislation may be committed only by an employer or by a union. In the case of alleged unfair labor practices by employers, an agent of the employer--

in short, a supervisor or other employer representative--must be shown to have committed the practice. In the overwhelming majority of cases, the issue does not arise. In some cases an employer may successfully defend on the ground that the person alleged to have committed the unfair practice was not a supervisor, but a rank-and-file employee whose acts could not be attributed to the employer. In these instances, the status of the alleged perpetrator becomes crucial.

These cases do not occur frequently because most unfair labor practice charges are based on the purported conduct of an individual who clearly qualifies as a supervisor or other representative of management. In the case of an alleged discharge because of union activity, for example, the discharge is itself tantamount to an admission that the person effectuating it was a supervisor, for the statutory definition of supervisor includes one who has the authority to discharge.

Consider, however, the unfair labor practice allegation of making coercive threats which interfere with legitimate union activity. Take, for example, the simple statement: "If you vote for the union you are going to be fired." The statement constitutes the clearest kind of violation of Section 8(a)(1) of the National Labor Relations Act or its counterpart, Section 12(a)(1) of the County Employee Relations Ordinance--if and only if--the statement is made by a supervisor or other person of comparable authority, or by one known to represent someone in authority. Such a statement by a rank-and-file employee would not constitute a violation of the NLRA or the County Employee Relations Ordinance, notwithstanding the vehemence, verve, and conviction with which it was made.

Having noted some consequences connected with a supervisory status or lack of a supervisory status, it should be clear that the question of who is a supervisor within the meaning of the NLRA or a comparable public sector law like our County Ordinance may be a vitally important question. We have already observed that in the public sector an employee's placement in a representation unit may depend upon his supervisory or nonsupervisory status; in the private sector, the resolution of the supervisory issue may also resolve the question of whether an employee is protected by the provisions of the NLRA; in both the private and public sectors, the resolution of the supervisory issue may also resolve the question of whether an unfair labor practice has been committed by an employer. It has also been noted

that the matter of who is a supervisor may bear on the policy question of whether supervisors should be covered or excluded from public sector labor relations law coverage. In this perspective, then, we might consider how, in a close case, one resolves the supervisory issue.

Who is a Supervisor

You will recall from the definitions of supervisor and supervisory employee presented above that the only distinction between the NLRA definition and the County Employee Relations Ordinance is the use of the word "County" for the word "employer" in the NLRA. There are a few rules of thumb that I would like to leave with you on the subject of defining a supervisor under these statutory definitions.

Rule 1. If any of the criteria listed in the definition apply to the worker, the worker is a supervisor. This is the rule in the private sector, and a quick examination of the private sector labor digests would reveal a number of NLRB and court decisions so holding. If, for example, a worker did not have the authority to hire, transfer, suspend, or to exercise any of the powers enumerated in the definition--with the exception of the authority to discipline workers--that worker would be a supervisor. This means that a party seeking to prove a supervisory status, when that is a contested issue, must disprove every allegation that one of these criteria has been met. Let me give you an example from my own experience.

For the NLRB, I once tried a case against a newspaper accused of discharging a worker because of his union activity. In these cases the ususal defense is that the employee was not discharged because of his union activity but for some other justifiable reason. This case was unusual. The employer admitted that the discharge was indeed because of union activity, but justified the discharged on the ground that the worker was a supervisor. Recall that in the private sector a supervisor may be fired for engaging in union activity. In this case the employer maintained that the discharge worker met all of the supervisory criteria contained in the statutory definition--not merely some or one, but all of them. They put on a day's worth of evidence in an attempt to show that this fellow discharged employees, hired, promoted, transferred and disciplined employees, laid them off, directed them, adjusted grievances--everything. That being the case, I had to spend a full day putting on evidence tending to show that this charging party

had no authority to discharge, hire, promote, transfer, discipline, lay off, direct or adjust grievances. The NLRB eventually found that this worker was a working foreman but not a supervisor within the meaning of the Act, that his discharge was therefore illegal, and that he was entitled to a few thousand dollars in back pay.

The criteria for determining whether an individual is a supervisor or a nonsupervisor are the same in unfair labor practice cases and unit issues arising in representation cases. If you are confronted with a representation issue involving a subsidiary supervisory issue, and you are consulting NLRA precedents, do not fail to search the literature concerning unfair labor practices. The precedents from unfair practice charges may, in this limited instance, be used in representation cases. So much for the rule 1; namely, that proof of any one of the supervisory criteria in the statutory definition is sufficient to prove a supervisory status.

Rule 2 is this: A supervisor's status is not determined by labels but by functions. In short, it makes little or no difference what the worker is called. A supervisory by any other name is a supervisor. It is what the worker does and not how the worker is described which counts. By this I mean that the naked label "supervisor" will not alone make a supervisor out of one who is in fact a leadman or working foreman. Job descriptions might be of some assistance in resolving the issue, but those are of limited assistance. And in the case of a conflict between the job description and credible testimony showing the worker's duties, the testimony would prevail.

Rule 3 is this: The enumerated criteria in the statutory definition must be read closely in conjunction with the statutory requirement that the purported supervisor's authority not be merely routine or of a clerical nature; it must require the use of independent judgment. For example, it is doubtful that an individual who lays off other employees on a seniority basis alone, and pursuant to the terms of a collective bargaining agreement, uses independent judgment in a non-routine, non-clerical manner. Those duties would be ministerial and would not require the exercise of discretion, or, to use the statutory language, "independent judgment." Thus, in the absence of other indicia of a supervisory status, this worker would very likely not be regarded as a supervisor.

Now, to move away from supervisors, let us look at another group of employees who are the subject of exclusion issues when representation units are discussed. These are professional employees, management employees and confidential employees. In the latter case, professional employees, we shall see that their treatment, for representation unit pruposes, is the same in the NLRA and most comparable public sector laws, including the Los Angeles County Employee Relations Ordinance. First, management employees.

This presents no problem at all in the private sector. Usually, if an employee is high enough on the eschelon ladder to warrant an executive title, that employee clearly acts for the employer and is easily regarded by every employer as such. Executives usually act for the employer at high policy levels, a level so high that a question of their bargaining with the employer simply does not arise. I suppose this is why the National Labor Relations Act does not even purport to deal with the situation and does not explicitly mention managerial employees, as does most public sector legislation.

Certainly, the definition of supervisor does not cover all management personnel. It is quite possible to be a management employee without qualifying as a supervisor under the statutory definition. An example would be that of a special assistant who supervised no one but reported directly to a line manager. Conversely, it seems clear that a supervisor of custodians who had the power to hire and fire, for example, would be a supervisor within the meaning of the statutory definition but would not be a manager.

In the public sector, management employees are usually defined as they are in the Los Angeles County Employee Relations Ordinance. Section 8C of that Ordinance keeps professional and management employees out of units with nonprofessional employees, unless those management or professional employees vote to be included in the representation unit. These two classes differ from the supervisory class in that there is no language in the Ordinance dealing with the exception relating to employees of the same classification.

Without going into detail about what constitutes a professional employee in the public sector, I would commend to you the language defining professionals in the National Labor Relations Act and suggest that you investigate precedents of the NLRB and the courts, even if you do not wish to follow them. Again, like the supervisor analogy, the statutory definition of "professional employee" in

the public sector is often lifted verbatim from the National Labor Relations Act.

I would caution those in the public sector to be careful not to run into a situation that the Board ran into involving professional employees, where contrary to the language in the statute the Board attempted to include professional employees in a unit with nonprofessionals. Those professionals who objected to going into that unit promptly went to the federal district court and got an injunction against the Board enjoining it from holding an election. This was unusual in that representation questions are normally within the exclusive province of the NLRB. The court found that the case was such a clear violation of the plain language in the National Labor Relations Act that an injunction was warranted.

I would conclude by saying I think it would be a mistake to simply ignore the long experience of the private sector on representation as well as on other labor-management matters. While public sector jurisdictions are not bound by private sector precedents, they may or may not be persuasive.

GUIDELINES FOR DETERMINATION OF MANAGEMENT, SUPERVISORY AND CONFIDENTIAL STATUS

In the application of each definition we have used guidelines from the private sector since they may well be followed by the EERB.

The term "management" is defined by Section 3540.1(g) of the California Government Code as follows:

> "Management employee means any employee in a position having significant responsibilites for formulating district policies or administering district programs."

Formulating District Policies

1. Is the employee directly involved in the preparation of the District's budget (e.g., allocation of District teaching or teacher aide positions)?

2. Is the employee involved in negotiations (e.g., regularly attend negotiating meetings or management meetings to discuss progress on matters pertaining to negotiations).

3. Is the employee regularly involved in District curriculum determination and program offerings?

4. Does the employee have decision making authority beyond the building level (are the decisions advisory - do the decisions require the use of initiative or the exercise of independent judgement)?

Administering District Programs

Examples of District Programs: reading, athletic, counseling, transportation, safety, student body government and health programs.

1. Is the employee responsible for developing or maintaining or coordinating District programs?

2. Is the employee responsible for preparing the budget or the allocation of staff and supplies for District programs?

The term "supervisor" is defined by Section 3540.1(m) of the California Government Code as follows:

> "'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 responsiblity to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

1. To qualify as a supervisor, a person need not satisfy all elements of the definition; it is sufficient if he satisfies only one element thereof. For example, it is sufficient if a person "transfers" or "responsibly directs" other employees (so long as he uses independent judgment and his actions are not routine).

2. Although it is legally sufficient if a person merely possesses the authority to take one of the actions listed in the definition, as a practical matter it is important that the district be able to prove that the person actually exercised such authority. For example, documentary evidence that a person reprimanded or warned employees would be of significant help in a unit determination hearing.

3. A person who "effectively recommends" supervisory actions is a supervisor, even if he does not make the final decision. For example, if it can be shown that an individual has previously recommended the termination of employees, and that such recommendations are almost always followed without independent investigation by his superior, the individual is a supervisor.

4. It is important that the individual exercise "independent judgment" in the exercise of one or more of the supervisory functions, as distinguished from rountine or clerical judgment. Thus, an employee who merely acts as a conduit for work instructions, rewards, or discipline, but in fact does not make these decisions, is not a supervisor.

5. Lead persons (e.g., Lead Groundskeeper) who make minor or routine decisions and set the example of how to perform a given task are not considered to be supervisors.

6. Professional employees who merely inform other, lesser-skilled employees as to the work to be performed and insure that such work is done, and whose duties and authority in this regard are solely a product of their highly-developed professional skills, are not supervisors as they do not exercise supervisory authority "in the interest of the employer." For example, the fact that a certificated classroom teacher does "direct the work" of a teacher's aide does not make the teacher a "supervisor."

7. Job titles are not necessarily determinative. If a person is called a "supervisor," but in fact possesses no supervisory authority, the job title will be of no legal significance. Similarly, a person who is not called a "supervisor," but in fact acts in such a capacity, will be held to be a supervisor.

8. If the individual in question receives extra pay or fringe benefits to compensate for supervisory responsibilities, these factors are helpful, although not determinative, in concluding that the person is a supervisor.

9. "Exempt" status for purposes of the Fair Labor Standards Act or State wage-hour laws is not determinative of supervisory status under Section 3540.1(m), and should not be relied upon in making this determination.

10. The number of employees supervised is helpful in determining supervisory status. Thus, if an individual directs the work of only one or two employees, the inference of supervisory status is not as strong as it would be if the individual directed ten or fifteen employees.

11. A record of past attendance at meetings of supervisors or managers is helpful, though not determinative, in showing that an individual is a supervisor.

12. If the employees view the person involved as one who can affect their employment status or their wages, hours or working conditions, this is one indication that the person will probably be considered a supervisor, especially in an unfair labor practice case.

13. A person who supervises on a part-time basis will be considered a supervisor if he meets the following criteria: (i) While acting as a supervisor, he exercises roughly the same supervisory authority as the person for whom he is substituting; and (ii) he substitutes as a supervisor with sufficient frequency and regularity (e.g., two days each week).

14. Teachers who function as departmental chairpersons may not be supervisors if they merely chair departmental meetings and exercise an equal vote with other faculty members, but do not actually make decisions that affect the employment status of other faculty members.

15. Written job descriptions can be of help in proving that an individual is a supervisor if the descriptions accurately reflect that person's authority and duties. Also, they should be prepared or updated well in advance of any possible unit determination hearing, as last minute revisions tend to have less probative value in these matters

16. Prior to any formal notification to supervisory employees regarding their status, management should carefully assess their sentiments and allegiances. Do they identify themselves as part of management, or do they feel like "just another employee"? If the latter is the case, it may be advisable to take immediate steps to strengthen their management identification, and to consider whether some of them can possibly be designated as "management employees."

17. If a District is attempting to designate an employee as "supervisory" or "management," and if the employee is certificated, the presence or absence of supervision or administration credentials as required by California Administrative Code, Title 5, Chapter 6, Article 1, Sections 5800-5802, may assume great significance in a unit determination proceeding. The positions requiring such credentials include Superintendent, Deputy Superintendent, Associate or Assistant Superintendent, Administrator, Deputy Administrator, Director, Deputy Director, Supervisor, Consultant, Coordinator, Principal, Vice Principal, Assistant Principal, Dean, and Registrar.

The term "confidential" is defined by Section 3540.1(c) of the California Government Code as follows:

> "Confidential employees means any employee who, in the regular course of his duties, has access to, or possesses information relating to his employer's employer-employee relations."

1. Is the employee involved in handling or have access to the District's labor relations policy data (e.g., negotiations parameters) respecting the District, department or other groups?

2. Does the employee's supervisor formulate, determine and effectuate management policies in the field of labor relations?

INSTRUCTIONS

On the following pages is a list of employee classifications in a school district. You are to go through this list of classifications and categorize each classification into one of the following units by placing the appropriate code next to it:

Classified (1 unit)	Class
Classified White Collar	W.C.
Classified Blue Collar	B.C.
Classified Building Trades	B.T.
Classified Transportation	Trans.
Classified Food Service	Food S.
Classified Instructional Aides	Inst. A.
Certificated Guidance and Special Service	G. & S.
Certificated Classroom Teachers	C.T.
Management	M.
Supervisory	S.
Confidental	Con.

CERTIFICATED STAFFING

UNIT PLACEMENT

Superintendent
Deputy Superintendent
Assistant Superintendent
Administrative Assistants
Directors
Assistant Directors
Supervisors
Consultant
Coordinator
Counselor
Head Psychologist

Educational Services:

Psychologists
Librarians
Nurses
Speech Therapists
District Teachers
Children Center/Head Start Teachers

Principals:

Elementary
Junior High School
High School

Assistant Principals:

Junior High School
High School

Deans:

High School

Counselors:

Junior High School
High School

Basic Teaching Staff:

Elementary
Junior High School
High School

CERTIFICATED STAFFING (Cont'd.)

UNIT PLACEMENT

Non-Permanent Employees:

Substitutes Daily
Substitutes Long-term
Temporary Teachers

EMR:

Elementary
Junior High School
High School

TMR:

Elementary

EH:

Elementary
Junior High School
High School

Librarians:

Junior High School
High School

Miller-Unruh Teachers

CLASSIFIED STAFFING

UNIT PLACEMENT

Office of the Superintendent:

Secretary to the Superintendent
Administrative Zone Secretary
Public Information Officer
Community Administrative Asst.
School Community Aide
Clerk Typist
Instructional Aide-Clerical

Personnel Services:

Director of Classified Personnel
Classified Personnel Assistant
Administrative Secretary
Senior Credential Technician
Fringe Benefit Specialist
Senior Secretary
Secretary
Intermediate Clerk Typist
Clerk Typist
File Clerk
Telephone Operator - Receptionist

Educational Facilities:

Senior Secretary
Intermediate Clerk Typist
Building Inspector

Educational Support Services:

Administrative Secretary
Senior Clerk Typist
Intermediate Clerk Typist
Clerk Typist
Secretary
Intermediate Account Clerk
Instructional Aide-Clerical
Instructional Aide-Library
Senior Secretary
School Community Aide
Nurse
Health Assistant
Audio-Visual Clerk
Instructional Media Technician
Senior Library Clerk
Library Clerk
Delivery Truck Operator
Custodian

CLASSIFIED STAFFING (Cont'd.)

UNIT PLACEMENT

Elementary Schools:

School Secretary
Senior Clerk Typist
Intermediate Clerk Typist
Clerk Typist
File Clerk
Graphic Arts Specialist
Teacher Assistant
Teacher Assistant TMR
Instructional Aide-Bilingual
Instructional Aide-Clerical
Instructional Aide-Elementary
Instructional Aide-Library
Instructional Aide-Special Education
Instructional Aide-Special Funding
Food Service Assistant II
Head Custodian
Custodian

Business Services:

Senior MTST Operator
Intermediate MTST Operator
MTST Operator
Data Processing Operations Manager
Programmer
Computer Operator
Keypunch Operator
Data Processing Center Clerk
Administrative Secretary
Offset Press Operator
Clerk Typist
Director of Fiscal Services
Accounting Supervisor
Accountant
Accounting Technician
Senior Account Clerk
Intermediate Account Clerk
Account Clerk
Director of Food Services
Field Supervisor-Food Services
Secretary
Food Production Manager
Central Kitchen Utility Leadman
Central Kitchen Utility Helper
Baker
Cook

CLASSIFIED STAFFING (Cont'd.)

UNIT PLACEMENT

Business Services: (cont'd.)

Food Services Assistant III
Food Services Assistant II
Food Services Assistant I
Maintenance and Operations Supervisor
Secretary/Dispatcher
Intermediate Clerk Typist
Maintenance Supervisor
Maintenance Foreman
Custodial Supervisor
Maintenance Leadman
Grounds Supervisor
Lead Painter
Master Clock Technician
Electrician Electronics Technician
Plumber
Heating & Refrigeration Mechanic
Locksmith
Glazier
Painter
Carpenter
Senior Maintenance Man
Skilled Apprentice-Electrical
Skilled Apprentice-Painter
Sprinkler Repairman
Grounds Equipment Operations Leadman
General Maintenance Man
Grounds Leadman
Grounds Equipment Operator
Gardner
Custodian
Purchasing Supervisor
Buyer
Purchasing Clerk
Transportation Supervisor
Transportation Dispatcher
Senior Secretary
Automotive Equipment Foreman
Automotive Mechanic
Head Bus Driver
Heavy Bus Driver
Heavy Bus Driver/Utility
Light Bus Driver
Deliveryman
Storekeeper

CLASSIFIED STAFFING (Cont'd.)

UNIT PLACEMENT

Business Services: (cont'd.)

Assistant Storekeeper
Senior Clerk Typist
Stock-Deliveryman
Switchboard Operator-Receptionist

Junior High Schools:

School Secretary
Intermediate Clerk Typist
Clerk Typist
Instructional Aide-Bilingual
Instructional Aide-Clerical
Instructional Aide-Library
Instructional Aide-Secretary
Instructional Aide-Special Education
Cafeteria Manager I
Food Service Assistant I
Head Custodian
Custodian

High Schools:

Senior Secretary
Secretary
Senior Clerk Typist
Intermediate Clerk Typist
Clerk Typist
Account Clerk
Senior Library Clerk
Library Clerk
Gym Attendant
Pool Attendant
School Community Aide
Teacher Assistant
Instructional Aide-Bilingual
Instructional Aide-Clerical
Instructional Aide-Library
Instructional Aide-Secondary
Cafeteria Manager II
Food Service Assistant II
Food Service Assistant I
Custodial Foreman
Custodial Leadman
Head Custodian
Custodian

UNIT PLACEMENT

Adult School:

Senior Secretary
Secretary
Senior Clerk Typist
Intermediate Clerk Typist
Clerk Typist
Instructional Aide-Adult Education
Instructional Aide-Bilingual
Instructional Aide-Early Childhood Education
Job Development Specialist
Technical Assistant-Vocational Education
School Community Aide

E

TAB E

UNIT DETERMINATION: THE PROCESS UNDER THE RODDA ACT

STATE OF CALIFORNIA
EDMUND G. BROWN JR. *Governor*

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
915 CAPITOL MALL, ROOM 200
SACRAMENTO, CA 95814
(916) 322-3088

March 26, 1976

Dear Interested Party:

The Board has completed its work on the Emergency Rules and Regulations governing representation matters. A copy of the Rules effective on April 1 is attached. Since the effective date of the Act's unfair practice provisions is currently July 1, rather than April 1, the attached Rules do not address themselves to anything more than representation matters.

As you will note, the published Rules require the filing of a request for recognition with the employer rather than with the Board. In recognition-request cases, intervening employee organizations are also required to file their intervening claims with the employer as prescribed by the statute.

Requests for an election, pursuant to Section 3544.8 of the Act, will be filed with the employer; but the intervening organizations seeking to appear on the ballot must file their showing of interest with the Board.

The Rules designate which regional office of the Board should be used for filing cases in a given school district. The general criterion used is the proximity of the school district to a Board regional office.

The Board will have regional offices in Los Angeles and San Francisco. In addition, the Board's headquarters office in Sacramento will also serve as a regional office for case-filing purposes. Our Sacramento address is the address on this letterhead; our temporary address in Los Angeles, effective April 1, will be: 107 South Broadway, Los Angeles, California, 90017. The San Francisco temporary address is unknown at this writing, but will be available by contacting the Sacramento office in the near future.

The hearing procedures for unit, objections and challenges issues will be the same, as will the procedure for transferring cases from a hearing officer to the Board. A hearing officer will hear those cases, following attempts to settle them informally.

The Board will hear cases based on a record made before the hearing officer. Initially, the hearing officer will make no recommendations and the cases will be immediately transferred to the Board following the close of the hearing. This, hopefully, will expedite the flow of representation cases

to the Board.

On unfair practice matters, while the Rules will remain unpublished at this time, the Board has completed work on most of the details concerning these Rules. Generally, the Board will follow, with some modifications, the "Option Z" procedure described in the preliminary rules draft. Thus, the unfair practice rules will, when adopted, provide for an informal settlement hearing followed by a formal hearing only if settlement efforts fail. The burden of carrying a case will be on the party making an allegation that the law has been violated. However, the structure of the Board administration will allow for some assistance in preparation of a bill of particulars and the Regional Director will have the discretion, in some cases, to direct that an investigation be conducted.

We would like to express our appreciation to those who testified at the hearings and who wrote memoranda and letters containing comments on the rules. We read every document that was sent to us, considered all of them and found most of them extraordinarily useful in our deliberations.

Sincerely,

Reginald Alleyne
Chairman

Jerilou H. Cossack
Board Member

Ray Gonzales
Board Member

Enclosure

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING
[illegible]
Office of Administrative Hearings
ENDORSED
APPROVED FOR FILING
(Gov. Code 11380.1)
MAR 25 1976
Office of Administrative Hearings

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Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

Educational Employment Relations Board
(Agency)

Date of adoption, amendment, or repeal:

March 24, 1976

By: Samuel A. Culpepper

Chairperson
(Title)

FILED
4:30 P.M.

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EMERGENCY ORDER ADOPTING REGULATIONS
OF THE EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In accordance with the provisions of the Administrative Procedures Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5) and pursuant to Sections 3541.3(e) and 3541.3(g) of the Educational Employment Relations Act (Government Code, Title 1, Division 4, Chapter 10.7) commencing with Section 3540, the Educational Employment Relations Board hereby adopts its regulations in Part III, Title 8, California Administrative Code as follows:

CHAPTER 1. DEFINITIONS

30000. Terms. As used in these rules and regulations, the terms "Board", "certified organization", "certified employee organization", "confidential employee", "employee organization", "exclusive representative", "impasse", "management employee", "meeting and negotiating", "organizational security", "public school employee" or "employee", "public school employer" or "employer", "recognized organization" or "recognized employee organization", and "supervisory employee", shall be defined in the manner set forth in Section 3540.1 of the Act.

30001. Act. "Act" means the Educational Employment Relations Act as contained in Chapter 10.7 of Division 4 of Title 1 of the Government Code (commencing with Section 3540).

30002. Executive Director. "Executive Director" means the officer of that title appointed by the Board pursuant to Section 3541(e) of the Act.

30003. General Counsel. "General Counsel" means the officer of that title appointed by Board pursuant to Section 3541(e) of the Act.

30004. Regional Office. "Regional Office" means an office established by the Board to assist in the administration of the Act.

(a) An appropriate region is that region which serves the county in which the principal office of an employer is located according to the following schedule:

Counties included in the Sacramento Regional Office jurisdiction:

Sacramento	Tehama	Placer
Siskiyou	Plumas	Colusa
Modoc	Butte	Sutter
Trinity	Glenn	Yolo
Shasta	Yuba	El Dorado
Lassen	Sierra	Amador
Alpine	Nevada	Calaveras
Mono	Tuolumne	San Joaquin
Mariposa	Stanislaus	Merced
Kings	Madera	Fresno
Tulare	Inyo	

Counties included in the Los Angeles Regional Office jurisdiction:

San Luis Obispo
Santa Barbara
Kern
Ventura
Los Angeles
Orange
Riverside
San Bernardino
San Diego
Imperial

Counties included in San Francisco Regional Office jurisdiction:

San Francisco	Marin
Del Norte	Lake
Humboldt	Napa
Mendocino	Contra Costa
Sonoma	Alameda
Santa Cruz	San Benito
Santa Clara	Monterey
Solano	

30005. Regional Director. "Regional Director" means the agent designated by the Board as regional director for a regional office of the Board.

30006. Hearing Officer. "Hearing Officer" means the person to whom the Board delegates authority to conduct hearings or to issue reports with respect to any matter for which a hearing is required by the Board.

30007. Filing with Employer. "Filing with an Employer" means actual delivery or delivery by registered mail to either the superintendent, deputy superintendent, or assistant superintendent of a school district, or to a school board itself at a regular or extraordinary meeting.

30008. Workday. "Workday" means a day when schools in a district are in session, excluding summer sessions.

CHAPTER 2. RECOGNITION AND REPRESENTATION PROCEEDINGS

Article 1. Policy

30009. Policy. It is the policy of the Board to encourage those persons covered by the Act to resolve questions of representation by agreement among themselves, provided such agreement is not inconsistent with the purposes and policies of the Act and the Board.

Article 2. Requests for Recognition Pursuant to Sections 3544 and 3544.1

30010. Request for Recognition. A request for recognition as exclusive representative shall be filed with an employer pursuant to Section 3544 of the Act. The request shall allege that a majority of the employees in an appropriate unit wish to be represented by the filing employee organization. The request shall contain the following:

(a) The name and address of the employee organization requesting recognition, the date of the request, and the name, address and telephone number of the employee organization representative to be contacted;

(b) The name and address of the employer;

(c) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;

(d) The approximate number of employees in the unit claimed to be appropriate;

(e) The name and address of any other employee organization which, within the 12 months preceding the request for recognition, either is known to have been recognized by the employer as the exclusive representative of any employees included in the unit described in the request for recognition, and the date of such other recognition, or is known to have demanded recognition as the exclusive representative of any employees in the unit described in the request for recognition;

(f) The effective date and expiration date of any known written agreement between the employer and another employee organization covering any employees included in the unit described in the request for recognition and the name and address of such other employee organization.

30011. Filing of Proof of Majority Support. The proof of majority support designating the employee organization as the exclusive representative of the employees in the proposed unit shall be filed with the employer concurrent with the request for recognition.

30012. Third Party Verification. The employer and employee organization may mutually agree to submit the employee organization's proof of majority support to a neutral third party, other than the Board, for verification.

30013. Copy of Request to Board. A copy of the employee organization's request for recognition shall be filed with the appropriate regional office.

30014. Posting of Notice of Request for Recognition. Not later than the end of the fifth workday following the date the request for recognition is received by the employer, the employer shall post the notice of the request for recognition, as required by Section 3544 of the Act, conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed. Such notice shall contain the following:

(a) A statement that the employer received from an employee organization a request to be recognized as the exclusive representative of the employees in a unit based on a claim that a majority of the employees in a proposed unit wish to be represented by the employee organization;

(b) The name and address of the employee organization making the request for recognition;

(c) A description of the unit the employee organization claims to be appropriate;

(d) The date the request was received by the employer and the date the notice was posted.

30015. Posting Period. The notice of the employee organization's request for recognition as described in Section 30014 of these rules shall be posted for a minimum of 15 workdays.

30016. Notice of Posting. Not later than the end of the fifth workday following the posting of the notice described in Section 30014 of these rules the employer shall transmit a copy of the notice to the appropriate regional office.

30017. Intervening Employee Organization. An employee organization filing a competing claim of representation or a challenge to the appropriateness of the unit shall be deemed an intervening employee organization.

30018. Intervention Filed with Employer. The intervention shall be filed with the employer and shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the intervening employee organization;

(c) The date of the intervention;

(d) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;

(e) The approximate number of employees in the unit claimed to be appropriate;

(f) The name and address of any other employee organization which, within the 12 months preceding the request for recognition, is known to have demanded recognition or known to have been recognized by the employer as the exclusive representative of any employees included in the unit described in the intervention;

(g) The date of such other recognition;

(h) The effective date and expiration date of any known written agreement between the employer and another employee organization covering any employees included in the unit described in the intervention.

30019. Proof of Intervention Support. The intervention filed with the employer shall be accompanied by proof of the minimum 30 percent support of the unit the intervenor claims to be appropriate.

30020. Copy of Intervention to Board. The intervening employee organization shall file a copy of its intervention with the appropriate regional office.

30021. Notice of Intervention. The intervening employee organization shall send a copy of its intervention to all employee organizations known to be seeking representation of any employees included in the unit described in the intervention. A statement of such service shall be sent to the appropriate regional office.

30022. Notice of Employer Decision. Within 30 calendar days, or at the end of the 15 workday notice - posting period, whichever is the longer period, the public school employer shall, in writing, notify the appropriate regional office of the following:

(a) Whether or not the employer doubts the appropriateness of the unit described in the request for recognition;

(b) Whether or not the employer contests the showing of majority support of the employee organization filing the request for recognition;

(c) Whether during the 15 workday posting period described in Section 30015, any employee organization filed an intervention;

(d) Whether the employer desires a representation election.

30023. Notice to Other Parties. The employer shall serve the employee organization requesting recognition and any intervening organization with a copy of the employer's notice to the appropriate regional office, as described in Section 30014, of these rules. A statement of such service shall be sent to the appropriate regional office.

Article 3. Requests for Representation Elections Filed Pursuant to Section 3544.3

30024. Petition for Representation Election. A petition for a representation election filed pursuant to Section 3544.3 shall be filed with the employer and shall contain the following:

(a) The name and address of the employer;

(b) A description of the groupings of jobs or positions of the unit claimed to be appropriate;

(c) The approximate number of employees in the unit claimed to be appropriate;

(d) The name and address of the spokesperson designated by the employees requesting a representation election.

30025. Copy of Petition to Board. A copy of the petition for representation election described in Section 30024 of these rules shall be concurrently filed with the appropriate regional office.

30026. Posting of Notice of Petition for Representation Election. Not later than the end of the fifth workday following the date the petition for a representation election is received by an employer, notice of the petition for a representation election shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed. Such notice shall contain the following:

(a) A statement that the employer has received a petition requesting a representation election signed by a majority of the employees in a unit claimed to be appropriate;

(b) The name and address of the employer;

(c) The name and address of the person designated as spokesperson by the employees requesting a representation election;

(d) The approximate number of employees in the unit claimed to be appropriate;

(e) The date the petition was filed and the date the notice was posted.

30027. Posting Period. The notice of the petition for a representation election described in Section 30026 of these rules shall be posted for a minimum of 15 workdays.

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30028. Copy of Notice to Board. Not later than the end of the fifth workday following the posting of the notice, the employer shall send to the appropriate regional office, a copy of the notice described in Section 30026 of these rules.

30029. Intervening Employee Organization. An employee organization desiring to appear on the ballot shall be deemed an intervening employee organization. The intervention shall be filed with the employer and shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the intervening employee organization;

(c) The date the intervention was filed;

(d) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;

(e) The approximate number of employees in the unit claimed to be appropriate;

(f) A statement that the intervention is supported by at least a 30 percent showing of interest in the unit claimed to be appropriate.

30030. Copy of Intervention; Showing of Interest to Board. The intervening employee organization shall file a copy of its intervention with the appropriate regional office, together with its proof of at least a 30 percent showing of interest in the unit claimed to be appropriate.

30031. List of Employees in Proposed Unit. Not later than ten calendar days following the date the intervention is received by an employer, the employer shall furnish the appropriate regional office with a list containing the names and corresponding job titles of those persons occupying the grouping of jobs described in the intervention.

30032. Notification of Employers Position. Within ten calendar days following the end of the 15 workday posting period described in Section 30027 of these rules, the employer shall in writing, notify the appropriate regional office of the following:

(a) The name and address of any intervening employee organization;

(b) The employer's position with respect to the appropriateness of the unit petitioned for and the unit described in any intervention.

Article 4. Decertification Petitions Filed Pursuant to Section 3544.5(d)

30033. Decertification Petition. A petition for a decertification election filed pursuant to Section 3544.5(d) of the Act by an individual

or an employee organization shall be filed in the appropriate regional office and shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the petitioner;

(c) The name and address of the certified or recognized employee organization;

(d) A description of the unit;

(e) The approximate number of employees in the unit;

(f) The date the incumbent employee organization was recognized or certified;

(g) The effective date and the expiration date of the current agreement covering employees in the unit;

(h) A statement that the petition is supported by at least 30 percent support for another employee organization or lack of support for the incumbent exclusive representative.

30034. Showing of Interest. A petition for decertification as described in Section 30033 of these rules shall be accompanied by evidence that at least 30 percent of the employees in the existing unit no longer desire to be represented by the incumbent exclusive representative or that they wish to be represented by another employee organization.

30035. Notification of Parties. The petitioner shall send a copy of the decertification petition to the employer, the incumbent exclusive representative, and any employee organization known to be claiming to represent employees in the unit. A statement of such service shall be sent to the appropriate regional office.

CHAPTER 3. ORGANIZATIONAL SECURITY PROVISIONS

Article 1. Petition for an Organizational Security Arrangement Pursuant to Section 3546(a).

30036. Organizational Security Vote. A petition for a vote pursuant to Section 3546(a) of the Act may be filed by an employer after agreement is reached on an organization security arrangement and prior to ratification of the entire proposed agreement. The petition shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the employee organization which is the exclusive representative of the employees in the unit;

(c) A description of the unit;

(d) The proposed organizational security arrangement;

(e) The date agreement was reached on the proposed organizational security arrangement;

(f) The date agreement was reached on the proposed agreement.

Article 2. Recision of Organizational Security Provisions Pursuant to Section 3546(b) of the Act.

30037. Recision of Organizational Security Arrangement. A petition to rescind an existing organizational security arrangement pursuant to Section 3546(b) of the Act may be filed in the appropriate regional office by any employee in the bargaining unit. Such petition shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the petitioner;

(c) The name and address of the employee organization which is the exclusive representative of the employees in the unit;

(d) A description of the established unit;

(e) The language of the organizational security arrangement sought to be rescinded;

(f) The effective date and the expiration date of the agreement containing the organizational security arrangement sought to be rescinded.

30038. Notice to Parties. The petitioner shall send a copy of the petition to the employer and the incumbent exclusive representative. A statement of such service shall be filed with the appropriate regional office.

30039. Showing of Interest. The petition to rescind, as described in Section 30037 of these rules must be accompanied by a showing that at least 30 percent of the employees in the established unit desire to rescind the existing organizational security arrangement.

30040. Bar to Recision. The Board will not entertain any petition to rescind in any unit where a majority of the employees have within the preceding 12 months voted not to rescind the organizational security arrangement.

30041. List of Employees. Within seven calendar days following the filing of the petition to rescind, the employer shall submit to the appropriate regional office a list containing the names and job titles of those persons described in the petition.

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CHAPTER 4. CHANGE IN UNIT OR CERTIFICATION

Article 1. Request for Clarification or Amendment of Existing Unit Description or Amendment of Certification Pursuant to Section 3541.3(e)

30042. Filing Requirements. A petition filed pursuant to Section 3541.3(e) of the Act shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the employee organization;

(c) The date of the petition;

(d) A description of the established unit or the established certification;

(e) The approximate number of employees in the established unit;

(f) A description of the proposed unit or proposed certification;

(g) The approximate number of employees in the proposed unit;

(h) The name and address of any other employee organization known to claim to represent any employees affected by the proposed unit or certification;

(i) A concise statement setting forth the reasons for the proposed unit or certification;

(j) The date the existing unit was established or the existing certification was issued.

CHAPTER 5. CONSENT ELECTIONS

Article 1. Resolution of Representation Disputes by Mutual Consent

30043. Election Agreement. A mutual agreement to conduct an election shall be approved by the regional director. The election agreement shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the petitioner;

(c) The name and address of any intervenor;

(d) A description of the appropriate unit;

(e) The date, time, and place of the election;

(f) The eligibility cutoff date;

(g) Such other matters to which the parties may be agreed;

(h) A waiver of a hearing on any of the issues to which the parties have agreed.

30044. Voter Eligibility Agreement. The parties may agree to the eligibility status of employees in the appropriate unit as voters.

CHAPTER 6. HEARINGS

Article 1. Hearings Pursuant to Section 3541.3(h)

30045. Hearings. In the event that a formal hearing is necessary, the regional director shall cause to be served on all parties a notice of hearing. Such notice shall contain the date, time and place of the hearing. Except under extraordinary circumstances, no request for a postponement of the hearing will be entertained.

30046. Notice of Hearing. Not later than the end of the fifth workday following the date the notice of hearing is received by the employer, the employer shall post a copy of the notice of hearing conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

30047. Powers and Duties of Hearing Officer. Hearings shall be conducted by a hearing officer designated by the regional director, except that on motion of the Board, the Board or a Board member may act as hearing officer. Hearing shall be open to the public unless otherwise ordered by the hearing officer. It shall be the duty of the hearing officer to inquire fully into all issues and to obtain a full and complete record upon which a decision can be made.

30048. Rights of Parties. Any party to the proceeding shall have the right to appear at the hearing in person, by counsel, or by other representative, and to call, examine and cross-examine witnesses and introduce documentary and other evidence on the issues.

30049. Showing of Interest. Whether an employee organization has satisfied the showing of interest requirement imposed by the Act is a matter for administrative determination by the regional director and may not be litigated at a hearing.

30050. Rules of Evidence. The rules of evidence prevailing in courts of law shall not be controlling. However, the hearing officer shall have authority to rule on objections to the introduction of testimony or documentary evidence. Witnesses shall be examined orally under oath.

30051. Decisions and Record. Upon completion of proceedings, the hearing officer shall submit the record of the case to the Board or issue a decision, if so instructed by the Board.

30052. Contents of Record. The record described in Section 30051 of these rules shall include the petition, notice of hearing, motions, rulings, orders, report of the hearing, exceptions, documentary evidence, any briefs or other documents submitted by the parties.

30053. Briefs and Oral Argument. A party desiring to make oral argument or to file a brief shall state such desire prior to the close of the hearing. The filing of briefs shall be within the discretion of the Board or its duly designated hearing officer.

30054. Filing of Briefs. Any party filing a brief shall submit the original and four copies within seven calendar days after the receipt of a copy of the transcript or within 10 days after the close of the hearing, whichever is sooner; except that in extraordinary circumstances the Board or its duly designated hearing officer may extend such time. Copies of any briefs submitted must be served on all other parties to the proceeding and a statement of such service shall be filed with the Board concurrent with the filing of the brief.

30055. Exceptions to Decision of Hearing Officer. Within ten calendar days after receipt of the decision of the hearing officer, a party may file with the Board an original and four copies of a statement in writing setting forth exceptions to the hearing officer's decision and an original and four copies of a brief in support thereof, at which time copies of the exceptions and briefs shall be served upon each party to the proceeding by certified mail return receipt requested.

30056. Content of Exception. The exceptions to a decision of a hearing officer shall include the following:

(a) A statement setting forth specifically the questions of procedure, fact, law, or a policy to which exceptions are taken;

(b) The identification of that part of the decision to which objection is made;

(c) Designation by page citation of the portions of the record relied upon;

(d) A statement of the grounds for exceptions.

30057. Waiver of Exception. An exception to a ruling, finding or conclusion which is not specifically urged is waived.

30058. Finality of Decision. Unless a party files exceptions as provided in Sections 30055 and 30056 of these rules, the decision of the hearing officer shall be final.

30059. Response to Exceptions. Within seven calendar days after receipt of exceptions, any party may file an original and four copies of

a response to the exceptions and a brief in support thereof. Copies of these documents shall simultaneously be served upon each party to the proceeding by certified mail, return receipt requested.

30060. Extension and Service. A request for an extension of time within which to file exceptions and briefs shall be in writing and shall be filed with the Board at least three calendar days before the expiration of the time required for filing, and shall indicate the position of the other parties. Copies of such request shall simultaneously be served upon each party to the proceeding. Extensions of time will be granted only under extraordinary circumstances.

30061. Oral Argument. A party desiring to argue orally before the Board shall submit a written request with stated reasons. The request shall accompany the exceptions or the response to the exceptions filed. The Board may permit oral argument on motion of a party or on its own motion.

30062. Informational Briefs and Argument. Any individual or organization may petition the Board to submit a brief or to argue orally before the Board on any case before the Board.

30063. Board Decisions. Upon submission of the case to the Board, the Board may adopt the decision of the hearing officer, direct an election, dismiss the petition, or make such other disposition of the case as it deems appropriate. The Board shall serve a copy of its decision on the parties.

DO NOT WRITE IN THIS SPACE

CHAPTER 7. ELECTIONS

Article 1. Elections Pursuant to Section 3544.7

30064. Notice of Board Decision. Following the issuance of a decision and direction of election by the Board, the employer shall post a notice of decision and direction of election. Such notice shall contain the following:

(a) The name and address of the employer;

(b) The name and address of the employee organization party to the proceeding;

(c) A description of the unit found to be appropriate by the Board;

(d) The date of receipt of the decision and direction of election;

(e) The date of posting of the notice.

30065. Posting Period. The notice described in Section 30064 of these rules shall remain posted for a minimum of 15 workdays.

30066. Showing of Interest. An employee organization must have demonstrated 30 percent showing of interest to the appropriate regional office in order to appear on the ballot by the end of the 15 workday posting period described in Section 30065 of these rules.

30067. List of Voters. Within seven calendar days following the receipt of the Board's decision and direction of election, the employer shall file with the appropriate regional office a list of the names, job titles, and work locations of all employees included in the unit described in the decision and direction of election.

30068. Removal of Name from Ballot. An employee organization may, not later than five workdays prior to the date of the scheduled election, request to have its name removed from the ballot. However, such employee organization must concurrently disclaim any interest in representing the employees described in the unit and must serve both its request and its disclaimer on all other parties.

30069. Authority to Conduct Elections. When the Board determines that an election shall be conducted, or when the regional director approves an agreement for a consent election, an election shall be conducted as directed by the Board or as described in the approved terms of a consent election agreement.

30070. Secret Ballot. All elections shall be by secret ballot.

30071. Election Scheduling. The regional director shall determine the date, time, and place and manner of the election, absent agreement of the parties.

30072. Challenges. Any party to the election may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Challenges will not be resolved unless they are sufficient in number to affect the results of the election.

30073. Tally of Ballots. At the conclusion of the balloting, the regional director shall furnish a tally of the ballots to all parties.

30074. Objections. Within seven calendar days following the receipt of the tally of ballots, any party to the election may file with the appropriate regional office objections to the conduction of the election. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election.

30075. Service of Objections. The objecting party shall send a copy of its objections to all other parties to the election. A statement service shall be attached to the filing of objections.

30076. Grounds for Objections. Objections will be entertained by the Board only on the following grounds:

(a) The conduct complained of is tantamount to an unfair practice as defined in Article 4 of the Act; or

(b) Serious irregularity in the conduct of the election.

30077. Certification of Election. If no timely objections are filed, and the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held, the regional director shall certify the results of the election.

30078. Resolution of Objections and Challenges. When objections are filed to the conduct of the election, or when challenged ballots are sufficient in number to affect the results of the election, the disputes on objections or challenges, or both, shall be resolved through the hearing procedures described in Chapter VI of these rules.

30079. Exception to Decision of Hearing Officer. Upon the close of the hearing on objections or challenged ballots, exceptions to the hearing officer's decision may be taken in accordance with the procedures set forth in Sections 30055 and 30056 of these rules.

30080. Runoff Elections. The regional director shall conduct a runoff election when a valid election results in no choice receiving a majority of the valid votes cast.

FINDING OF EMERGENCY

The Educational Employment Relations Board finds that an emergency exists, and that the foregoing regulations are necessary for the immediate preservation of the public order, safety or general welfare. A statement of such facts constituting an emergency is:

STATEMENT OF FACTS

The Educational Employment Relations Board is a newly created State Agency mandated by Chapter 961 of the Statutes of 1975 to administer this new legislation governing employer-employee relations of public school employers and employees. The Board is also authorized to administer this law through the promulgation of procedural and substantive regulations. Certain sections of the Statute become operational April 1, 1976. These provisions relate to the organizational rights of employees, the representational rights of employee organizations, and the recognition of exclusive representatives. In order that public employers and employees will be aware of their responsibilities under this statute, these regulations therefore are adopted to take effect April 1, 1976.

The Educational Employment Relations Board has determined that in accordance with Chapter 961 of the Statutes of 1975, that the above regulations impose no state-mandated local costs that require reimbursement under Section 2231 of the Revenue and Taxation Code.

87042-780 6-78 35M OSP

STATE OF CALIFORNIA
EDMUND G. BROWN JR., *Governor*
EDUCATIONAL EMPLOYMENT RELATIONS BOARD
915 CAPITOL MALL, ROOM 235
SACRAMENTO, CA 95814

RESOLUTION

The Educational Employment Relations Board adopted the following resolution during a public meeting held on April 9, 1976, in Sacramento, California:

RESOLVED:

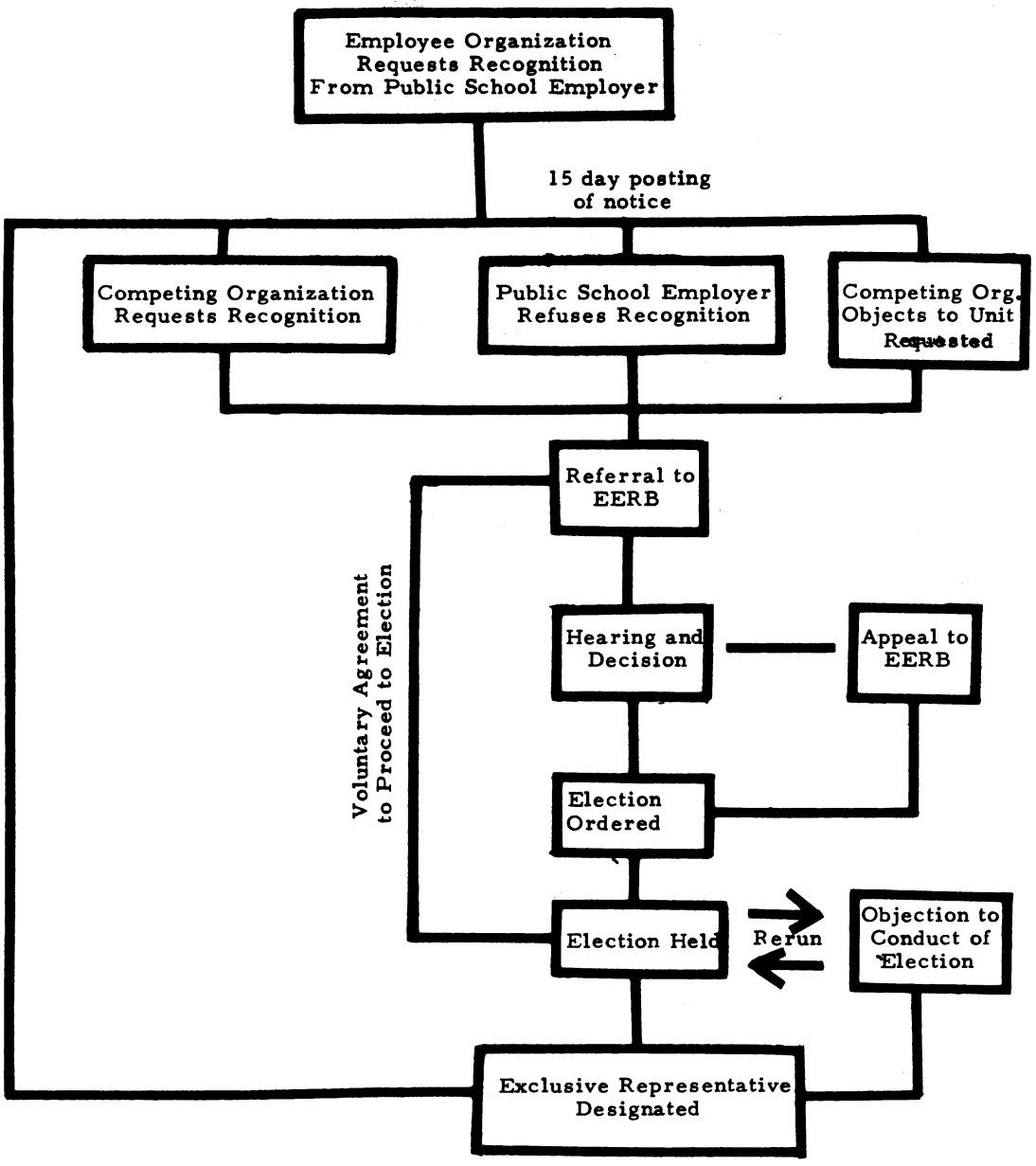
"THE RODDA ACT'S REPRESENTATION PROCEDURES ARE PRE-EMPTIVE AND OUGHT TO BE USED TO BEGIN PROCEDURES LEADING TO ELECTIONS OR VOLUNTARY RECOGNITIONS."

"THE EDUCATIONAL EMPLOYMENT RELATIONS BOARD WILL ONLY CERTIFY THE RESULTS OF AN ELECTION CONDUCTED BY ITSELF OR UNDER ITS SUPERVISION."

Charles Cole
Charles Cole
Executive Director

EERB-4/12/76

RECOGNITION PROCESS



RECOGNITION REQUESTS UNDER S.B. 160

If, after April 1, 1976, an employee organization petitions to become the exclusive representative of a group of employees within the District, the Educational Employment Relations Act and the EERB's Regulations mandate that the District take certain actions within specified time periods.

These time limits are as follows:

Day 1. Petition (or other form of "request") filed with the "Employer" (this means delivery by hand or by registered mail to the Board of Trustees, the Superintendent, or a Deputy or Assistant Superintendent).

Day 1. Examine the petition for sufficiency. It must include:

a. A description of the proposed unit; and

b. The names and addresses of the District, the employee organization, and the employee organization's designated representative (plus his telephone number); and

c. The appropriate number of employees in the proposed unit; and

d. Details concerning prior requests for, or granting of, exclusive recognition for any employees within the proposed unit, and any existing labor agreements covering such employees (not applicable as of this date); and

e. Evidence that at least 50% + 1 of the employees in the proposed unit are members of the organization or support the petition (If you have any question concerning the legal sufficiency of the petition, you should contact legal counsel immediately).

Day 1. plus 5 workdays*	Post notice of the petition in each facility where employees work who are in the proposed unit. (The EERB may eventually publish a form for this notice, but until they do, you may use the one attached. *The notice must remain posted for at least 15 workdays.*
Day 1. plus 10 workdays*	Mail a copy of your posted Notice to the appropriate EERB Regional Office.
Posting date plus 15 workdays*	Time period for intervention by another organization. Such intervention must be supported by at least 30% of the employees in an appropriate unit if the competing organization also wishes to claim recognition. In addition, such an organization may file a "challenge" to the original petitioner's proposed unit.
Posting date plus 15 workdays*	District management and the Board of Trustees should have determined whether: (i) they view the proposed unit as appropriate or inappropriate, and (ii) whether the District will ask that a secret ballot election be conducted, even if it feels that the unit is appropriate (Note: if another employee organization intervenes with a sufficient showing of interest, a secret ballot election is mandatory).
Posting date plus 15 workdays* or 30 calendar days (whichever is longer)	If the District has not granted recognition to the petitioning organization, it should notify the petitioning organization(s) and in writing concerning: a. A possible granting of recognition to a petitioner; or b. Whether it contests the sufficiency of the organization's showing of majority support; c. A challenge by the District or another organization to the appropriateness of the unit, and a request for an EERB unit determination hearing; or

---

* A "workday" is one when school is in session. Thus, for example, the Easter Recess would suspend any of the time periods that refer to workdays.

d. Any request for a secret ballot election (including the election that would be required if an intervenor produced a 30% showing of interest).

Under such circumstances, a copy of any petition should be forwarded to legal counsel as soon as it is received by you.

_____ DISTRICT

N O T I C E

A REQUEST FOR RECOGNITION AS THE EXCLUSIVE REPRESENTATIVE OF A UNIT OF EMPLOYEES OF THIS DISTRICT WAS FILED BY

_____

_____
(Name and Address of Organization)

ON _____.
(Date of Filing)

THE REQUEST IS BASED UPON THE ORGANIZATION'S CLAIM THAT A MAJORITY OF THE EMPLOYEES IN THE PROPOSED UNIT WISH TO BE REPRESENTED BY THIS ORGANIZATION.

THE ORGANIZATION'S PROPOSED UNIT IS AS FOLLOWS:

NO DETERMINATION HAS YET BEEN MADE AS TO THE DISPOSITION OF THE REQUEST; THIS NOTICE IS POSTED FOR YOUR INFORMATION AS REQUIRED BY CALIFORNIA GOVERNMENT CODE, SECTION 3544, AND BY PART III, TITLE 8, SECTION 30014, OF THE CALIFORNIA ADMINISTRATIVE CODE.

_____ _____
Date of Posting Superintendent

EMPLOYEE VOTING ELIGIBILITY

Even after an appropriate unit has been agreed upon, serious problems can develop over which employees (other than management, supervisory and confidential) belong in the unit and therefore have a right to vote.

Looking once again to the private sector for guidance we find that:

Part-Timers, Temporary Employees and Trainees*

"The NLRB allows permanent part-time employees regularly working a set number of hours weekly (approximately eight to ten, but lesser amounts have sufficed) to vote along with full-time employees.[1] But part-timers will be excluded if both union and management desire this result.[2] The Board has included within the unit part-timers hired shortly before the eligibility date,[3] students who work full time in the summer and a few hours each week the rest of the year[4] and employees who regularly had weeks of no work between periods of working part time.[5] Since 1969, part-timers who also receive social security payments are allowed to vote.[6]

"'Temporary employees' as the Board defines them, are consistently denied unit inclusion. This category covers employees hired to take care of seasonal or special increases of work when their prospects for continued employment are dubious. 'Sporadic' work, three days one week, none for a month, and then two days, is viewed by the Board as 'temporary,' as is work that is done 'on call' regardless of how long the arrangement has existed.[7]

"Trainees and apprentices may be included in the unit depending on the nature of their training, what they are being trained for, the work they do and the similarity of their working conditions with those of the regular employees. Garrett Supply Co. shows the manner in which the Board approaches the problem.[8] There, inside sales trainees were excluded from a warehouse unit because they were there only temporarily, with different working conditions and higher pay than the warehousemen, under an arrangement that foreclosed their working there permanently. In contrast, in UTD Corp. apprentices in a four-year training program under which some would stay in production work were included in a production and maintenance unit.[9]"

New, Discharged and Laid Off Employees

"Voting eligibility depends on being an 'employee', as the Board defines it, at two distinct times: (i) the 'eligibility date', which is either the payroll date immediately prior to the 'Direction of Election,' or a date agreed upon by the parties; and (ii) on the date of the election.[10] As employees hired after the 'eligibility

date' cannot vote, management should consider this if the company must hire new employees before the election.

"Discharged Employees. Their voting rights depend on whether the person was still employed on the 'eligibility date' (and therefore had his name on the eligibility list given to the NLRB) and whether the employee was challenged when he tried to vote.

If the discharged employee's name is on the eligibility list, the employer's election observer must challenge him, or the vote automatically will be counted with all the others.[11] If the name is not on the list, the Board representative at the election is required to challenge the employee.[12] If a voter is challenged, his vote will be ignored unless it could affect the election's outcome: for example, a five-five tie with a discharged employee casting a challenged vote.

"Laid Off Employees. Questions on the voting rights of these employees arise at various times. If the layoff was before an informal conference, the union and employer may disagree as to whether the employee can vote, and an NLRB hearing may be required to determine the issue. If there was a layoff after the conference, but before the hearing, management should be prepared at the hearing to explain the circumstances if it claims the layoff is permanent and the employee is therefore ineligible to vote.

"If a hearing is held on the question, the nature of the layoff is vital: the employee can vote if it was only a temporary layoff where the worker has a reasonable probability of reemployment within the reasonable future.[13] If there is little or no likelihood of reemployment within that period, the layoff is permanent and the employee cannot vote.[14]

"If the layoff was after the hearing, so the Board could not determine whether the employee could vote, the issue may be decided after the election, if the employee is challenged when he attempts to vote. If the employee's name was on the eligibility list, the company's election observer must challenge the employee if management believes the layoff to be permanent.[15] As with discharged employees, the challenged vote will be ignored unless it could affect the election's outcome.

"Employees on Leave of Absence or Vacation. Unit employees on leave of absence or vacation are permitted to vote if they appear at the polling place at election time. Proxy ballots are not permitted, and absentee balloting by mail normally cannot be utilized. But the regional director can use mail ballots where the employee cannot vote in person because of 'employer action' such as assignment to a remote location.[16]"

FOOTNOTES

1. See, e.g., VIP Radio, Inc., 128 NLRB 113, 46 LRRM 1278 (1960); Gulf States Telephone Co., above; Dixie Wax Paper Corp., 117 NLRB 548, 39 LRRM 1288 (1957).

2. Bachman Uxbridge Corp., 109 NLRB 868, 34 LRRM 1480 (1954).

3. Winn Dixie Stores, Inc., 124 NLRB 908, 44 LLRM 1533 (1959).

4. Horn & Hardart Co., above; Taunton Supply Corp., 137 NLRB 221, 50 LRRM 1154 (1962); Giordano Lumber Co., 133 NLRB 205, 48 LRRM 1629 (1961).

5. Bailey Department Stores Co., 120 NLRB 1239, 42 LRRM 1164 (1958).

6. Holiday Inns of America, 176 NLRB No. 124, 71 LRRM 1333 (1969); Indianapolis Glove Co. v. NLRB, 400 F.2d 363 (6th Cir. 1968), 69 LRRM 2261.

7. Bowman Transp., Inc., above; Eldon Miller, Inc., 103 NLRB 1627; 32 LRRM 1017 (1953); Doran Sales Co., 102 NLRB 1437, 31 LRRM 1454 (1953).

8. Garret Supply Co., 165 NLRB No. 90, 65 LRRM 1360 (1967).

9. UTD Corp., 165 NLRB No. 48, 65 LRRM 1310 (1967).

10. See NLRB Field Man., Sec's 11086.3 and 11230. Employees temporarily out of the unit will be allowed to vote, however; Burke Div. of Brunswick Corp., 177 NLRB No. 2, 71 LRRM 1365 (1969).

11. NLRB Field Man. Sec. 11338.

12. 149 Ibid.

13. Scobell Chem. Co. v. NLRB,267 F.2d 922 (2d Cir. 1959), 44 LRRM 2366.

14. John Kinkel & Son, Inc., 157 NLRB 744, 61 LRRM 1470 (1966); Westinghouse Air Brake Co., 119 NLRB 1391, 41 LRRM 1307 (1958).

15. NLRB Field Man. Sec. 11338.

16. NLRB Field Man. Sec. 11336.1.

*The foregoing discussion is taken from "Bargaining Units: Who Is In Them" in Hugh P. Husband's, Management Faces Unionization (New York: Management Source Books, 1969) pp. 91-98.

MANAGEMENT GUIDE TO A CONSENT ELECTION AGREEMENT

Under the current Rules and Regulations of the Educational Employment Relations Board, one of the options open to a school district to resolve questions concerning representation is a consent election (EERB Rules and Regulations, Section 30043). Such an election appears appropriate when the parties can meet and agree upon the definition of an appropriate unit for purposes of representation. The possible advantages of this procedure include the ability of the District to have a greater voice in the definition of the representation unit; the time, place, and date of the election; and, most importantly, to possibly secure a "guarantee" that a petitioning employee organization will not agree to a unit and then, as soon as the organization has been certified as the exclusive representative, utilize the unit clarification procedures (Section 30042) of the EERB Rules and Regulations to reinclude classifications that were previously excluded from the unit by agreement of the parties.

The attached "model" Agreement is, in most instances, self-explanatory. However, if you are discussing the possibility of such an Agreement with a petitioning employee organization, you should be aware of the following guidelines:

1. Eligibility cutoff date (Section 9 of the model Agreement). This date is utilized to determine the precise identity of employees who may be eligible to vote in the election. Under normal circumstances, the date should be set at the end of the last payroll period preceding the date of the election, since this is a date for which the District will normally have records to establish the identity of employees eligible to vote.

2. Date, time, and place of election (Section 10 of the model Agreement). Under all but the most unusual circumstances, such an election is held at the employer's premises. If the election will involve employees who are employed at

several different locations, and it would be inconvenient to establish a central polling place, it may be necessary, under these circumstances, to establish multiple locations for such an election. The date of the election should be at least ten days to two weeks after the eligibility cutoff date, to assure the ability of the District to prepare the necessary lists of eligible (and ineligible) voters, and should occur on a day when absenteeism can normally be expected to be minimal (e.g., on payday). The polls should be open at times that will make voting convenient for employees within the agreed upon unit.

3. The appropriate unit (Section 11 of model Agreement). As presently drafted, this Section would assure that any agreement of the parties regarding the appropriate unit would be a "permanent" agreement, and would not be subject to clarification or amendment during the life of any certification of an exclusive representative that might result from the election. The portion of this Section setting forth inclusions in and exclusions from the agreed upon unit should be drafted with some degree of precision. In some instances, general descriptions of categories of employees who may be included within or excluded from the unit may be sufficient, but, in other circumstances (e.g., where a "managerial" classification has been the subject of much dispute prior to the agreement), specific job classifications should be set forth as inclusions or exclusions.

4. Approval of Agreement. The consent election agreement will be of no force or effect unless it is expressly approved by the appropriate Regional Director of the EERB. Thus, under some circumstances, it may be appropriate for the District or its representative to discuss a draft of the proposed agreement with an EERB Regional Director or EERB Field Agent prior to the time that all parties affix their signatures.

(NOTE: The attached "model" Agreement has not yet been approved by the EERB or by any of its Regional Directors. However, it has been drafted utilizing a format and terms that have often proved acceptable in other sectors of the economy.)

AGREEMENT REGARDING CERTIFICATION
UPON CONSENT ELECTION

Pursuant to Part III, Title 8, Section 30043, of the California Administrative Code, and subject to the approval of the Regional Director for the Educational Employment Relations Board, the undersigned parties hereby agree as follows:

1. SECRET BALLOT ELECTION. An election by secret ballot shall be held under the supervision of the Educational Employment Relations Board among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented by (one of) the undersigned employee organization(s). Said election shall be held in accordance with the Educational Employment Relations Act, and the applicable Rules and Regulations of the Educational Employment Relations Board.

2. ELIGIBLE VOTERS. The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION. Within five working days following approval of this Agreement by the Regional Director, the Employer will prepare and post notices setting forth the manner and conduct of the election to be held pursuant to this Agreement. Such notices shall be posted in a conspicuous location in each facility of the Employer in which employees within the agreed upon unit are employed, and shall remain posted until 5:00 p.m. on the agreed upon election date.

4. OBSERVERS. Each party hereto will be allowed to station an equal number of authorized observers, selected from among the non-managerial employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. TALLY OF BALLOTS. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. POST-ELECTION AND RUN-OFF PROCEDURE. All procedures subsequent to the conclusion of counting ballots shall be in conformity with the Educational Employment Relations Board's Rules and Regulations.

7. WAIVER OF HEARING. Hearing and notice thereof are expressly waived by the parties as to all matters set forth in this Agreement.

8. WORDING ON THE BALLOT. Where only one employee organization is signatory to this Agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one employee organization is signatory to this Agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom.

First.

Second.

Third.

9. ELIGIBILITY CUTOFF DATE. No person employed by the Employer with the agreed upon unit shall be eligible to vote unless such person was employed on or before _____, ___, 197_.

10. DATE, TIME, AND PLACE OF ELECTION. The election shall be conducted at _____, on (date) _____, from _____ _.m. until _____ _.m.

11. THE APPROPRIATE UNIT. The parties understand and agree that the job classifications or groupings of positions set forth below shall constitute an appropriate unit of representation for the purpose of the election conducted pursuant to this Agreement, and for the purpose of any certification that may result therefrom. The parties further agree that the excluded job classifications or groupings set forth below are not proper for inclusion in such appropriate unit; and further affirm and agree that, as to all job classifications, groupings of positions, or duties performed by persons employed

by the Employer as of the date of this Agreement, which matters are herewith affirmed to have been considered for inclusion in or exclusion from such unit, the parties unqualifiedly waive and forego any and all rights to request clarification or amendment of such unit pursuant to Government Code, Section 3541.3(e), and applicable Rules and Regulations of the Educational Employment Relations Board during the period of any certification that may result from the election to be conducted pursuant to this Agreement. The appropriate unit SHALL INCLUDE:

AND SHALL EXCLUDE:

If a Notice of Hearing has previously issued as to the matters set forth within this Agreement, the approval of this Agreement by the Regional Director shall constitute a withdrawal of any such notice heretofore issued.

_____ (Employer)	_____
_____	_____ (Petitioning Organization)
_____ (Address)	_____
	_____ (Address)
By_____ (Authorized Signature)	
_____ (Title)	By_____ (Name and Title)
on_____ (Date)	on_____ (Date)

APPROVED:

By_____
Regional Director,
Educational Employment
Relations Board

on_____
(Date)

_____
(Intervening Organization)

_____

_____
(Address)

By_____
(Name and Title)

on_____
(Date)

F

TAB F

APPENDICES

★NOTICE TO EMPLOYEES

FROM THE

National Labor Relations Board

A PETITION has been filed with this Federal agency seeking an election to determine whether certain employees want to be represented by a union.

The case is being investigated and NO DETERMINATION HAS BEEN MADE AT THIS TIME by the National Labor Relations Board. IF an election is held Notices of Election will be posted giving complete details for voting.

It was suggested that your employer post this notice so the National Labor Relations Board could inform you of your basic rights under the National Labor Relations Act.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union security clause requiring employees to join the union.

It is possible that some of you will be voting in an employee representation election as a result of the request for an election having been filed. While NO DETERMINATION HAS BEEN MADE AT THIS TIME, in the event an election is held, the NATIONAL LABOR RELATIONS BOARD wants all eligible voters to be familiar with their rights under the law IF it holds an election.

The Board applies rules which are intended to keep its elections fair and honest and which result in a free choice. If agents of either Unions or Employers act in such a way as to interfere with your right to a free election, the election can be set aside by the Board. Where appropriate the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

NOTE:

The following are examples of conduct which interfere with the rights of employees and may result in the setting aside of the election.

- Threatening loss of jobs or benefits by an Employer or a Union
- Misstating important facts by a Union or an Employer where the other party does not have a fair chance to reply
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time within the 24-hour period before the election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

Please be assured that IF AN ELECTION IS HELD every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with this agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.

NATIONAL LABOR RELATIONS BOARD

an agency of the

UNITED STATES GOVERNMENT

UNITED STATES OF AM

NOTIC

PURPOSE OF THIS ELECTION

This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election, for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election.

SECRET BALLOT

The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the election. Your attention is called to Section 12 of the National Labor Relations Act:

ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

An agent of the Board will hand a ballot to each eligible voter at the voting place. Mark your ballot in secret in the voting booth provided. DO NOT SIGN YOUR BALLOT. Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of an agent of the Board.

A sample of the official ballot is shown at the center of this Notice.

ELIGIBILITY RULES

Employees eligible to vote are those described under VOTING UNIT in this Notice of Election, including employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also including employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS

An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge MUST be made before the voter has deposited his ballot in the ballot box.

AUTHORIZED OBSERVERS

Each of the interested parties may designate an equal number of observers, this number to be determined by the Regional Director or his agent in charge of the election. These observers (a) act as checkers at the voting place and at the counting of ballots, (b) assist in the identification of voters, (c) challenge voters and ballots, and (d) otherwise assist the Regional Director or his agent.

INFORMATION CONCERNING ELECTION

The Act provides that only one valid representation election may be held in a 12-month period. Any employee who desires to obtain any further information concerning the terms and conditions under which this election is to be held or who desires to raise any question concerning the holding of an election, the voting unit, or eligibility rules may do so by communicating with the Regional Director or his agent in charge of the election.

WARNING: THIS IS THE ONLY OFFIC

Form NLRB-707 (7-72)

ERICA ★ NATIONAL LABO

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IAL NOTICE OF THIS ELECTION AND M

)R RELATIONS BOARD

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RIGHTS OF EMPLOYEES

Under the National Labor Relations Act, employees have the right:

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a State where such agreements are permitted, enter into a lawful union security clause requiring employees to join the union.

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights. The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. Where appropriate the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct which interfere with the rights of employees and may result in the setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Misstating important facts by a Union or an Employer where the other party does not have a fair chance to reply
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time within the 24-hour period before the election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice

Improper conduct will not be permitted. All parties are expected to cooperate fully with this agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.

NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT

UST NOT BE DEFACED BY ANYONE

U.S. GOVERNMENT PRINTING OFFICE: 1972—O-472-666

Form NLRB-502
(11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64 R002 14

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO

DATE FILED

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

☐ **RC–CERTIFICATION OF REPRESENTATIVE**—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

☐ **RM–REPRESENTATION (EMPLOYER PETITION)**—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

☐ **RD–DECERTIFICATION**—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

☐ **UD–WITHDRAWAL OF UNION SHOP AUTHORITY**—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

☐ **UC–UNIT CLARIFICATION**—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: *(Check one)* ☐ In unit not previously certified.
☐ In unit previously certified in Case No. _____.

☐ **AC–AMENDMENT OF CERTIFICATION**—Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER | EMPLOYER REPRESENTATIVE TO CONTACT | PHONE NO

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)* | 4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

5. Unit Involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included

Excluded

6a. NUMBER OF EMPLOYEES IN UNIT

PRESENT

PROPOSED (BY UC/AC)

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?*

☐ YES ☐ NO

*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on _____ *(Month, day, year)* and Employer declined recognition on or about _____ *(Month, day, year)* *(If no reply received, so state)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*

NAME | AFFILIATION

ADDRESS | DATE OF RECOGNITION OR CERTIFICATION

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?
YES _____ NO _____

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF _____ *(Insert name)* A LABOR ORGANIZATION, OF _____ *(Insert address)* SINCE _____ *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

_____ *(Petitioner and affiliation, if any)*

By _____ *(Signature of representative or person filing petition)* _____ *(Title, if any)*

Address _____ *(Street and number, city, State, and ZIP Code)* _____ *(Telephone number)*

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 861-256

FORM NLRB-4812
(1-73)

NATIONAL LABOR RELATIONS BOARD

NOTICE: PARTIES INVOLVED IN A REPRESENTATION PETITION SHOULD BE AWARE OF THE FOLLOWING PROCEDURES:

Right to be represented by counsel

Any party has the right to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the courts. In the event you wish to have a representative appear on your behalf, please have your representative complete Form NLRB-4701, Notice of Appearance, and forward it to the respective regional office as soon as counsel is chosen.

Designation of representative as agent for service of documents

In the event you choose to have a representative appear on your behalf, you may also, if you so desire, use Form NLRB-4813 to designate that representative as your agent to receive exclusive service on your behalf of all formal documents and written communications in the proceeding, excepting decisions directing an election and notices of an election, and further excepting subpoenas, which are served on the person to whom they are addressed. If this form is not filed, both you and your representative will receive copies of all formal documents. If it is filed copies will be served only upon your representative, and that service will be service upon you under the statute. The designation once filed shall remain valid unless a written revocation is filed with the Regional Director.

Investigation of petition

Immediately upon receipt of the petition, the regional office conducts an impartial investigation to determine if the Board has jurisdiction, whether the petition is timely and properly filed, whether the showing of interest is adequate, and if there are any other interested parties to the proceeding or other circumstances bearing on the question concerning representation.

Withdrawal or dismissal

If it is determined that the Board does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. Should the petitioner refuse to withdraw, the Regional Director dismisses the petition and advises the petitioner of the reason for the dismissal and of the right to appeal to the Board.

Agreement and conduct of election

Upon the determination that the criteria are met for the Board to conduct a secret ballot election to resolve the question concerning representation, the parties are afforded the opportunity to enter into a consent election agreement. There are two forms: An Agreement for Consent Election provides that the parties accept the final determination of the Regional Director; a Stipulation for Certification Upon Agreement for Consent Election provides for the right of appeal to the Board on postelection matters. The secret ballot election will be conducted by an agent of the NLRB under the terms of the agreement and the parties shall have the right to observe and certify to the conduct of the election.

Hearing

If there are material issues which the parties cannot resolve by agreement, the Regional Director may issue a notice of hearing on the petition. At the hearing, all parties will be afforded the opportunity to state their positions and present evidence on the issues.

Scheduling of a hearing does not preclude the possibility of a consent election agreement. Approval of an agreement will serve as withdrawal of the notice of hearing.

Names and addresses of eligible voters

Upon approval of an election agreement, or upon issuance of a direction of election, the employer will be required to prepare a list of the names and addresses of eligible voters. The employer must file the eligibility list with the Regional Director within 7 days after approval of the election agreement, or after the Regional Director or the Board has directed an election. The Regional Director then makes the list available to all other parties. The employer is advised early of this requirement so that he will have ample time to prepare for the eventuality that such a list becomes necessary. (This list is in addition to list of employees in the proposed unit and their job classifications to be used to verify the showing of interest by a union.)

GPO 941-547

NLRB-651
(12-61)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AGREEMENT FOR CONSENT ELECTION

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby waive a hearing and AGREE AS FOLLOWS:

1. SECRET BALLOT.—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election, and provided further that rulings or determinations by the Regional Director in respect of any amendment of any certification resulting therefrom shall also be final.

2. ELIGIBLE VOTERS.—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, employees in the military services of the United States who appear in person at the polls, employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements, but excluding any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than 12 months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION.—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS.—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. TALLY OF BALLOTS.—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties. When appropriate, the Regional Director shall issue to the parties a certification of representatives or of results of election, as may be indicated.

6. OBJECTIONS, CHALLENGES, REPORTS THEREON.—Objections to the conduct of the election or conduct affecting the results of the election, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within 5 days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties at the time of filing with the Regional Director. The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If the challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon. The method of investigation of objections and challenges, including the question whether a hearing should be held in connection therewith, shall be determined by the Regional Director, whose decision shall be final and binding.

7. RUN-OFF PROCEDURE.—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall proceed in accordance with the Board's Rules and Regulations.

8. COMMERCE.—The Employer is engaged in commerce within the meaning of Section 2 (6) (7) of the National Labor Relations Act.

16-47029 7

9. WORDING ON THE BALLOT.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. (If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.)

First.

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY.—

11. DATE, HOURS, AND PLACE OF ELECTION.—

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT.—

If Notice of Representation Hearing has been issued in this case, the approval of this agreement by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

..... (Employer)	..... (Name of Organization)
By ..... (Name and title) ..... (Date)	By ..... (Name and title) ..... (Date)
Recommended:	..... (Name of other Organization)
..... (Board Agent) ..... (Date)	By ..... (Name and title) ..... (Date)
Date approved	Case No. .....
..... Regional Director, National Labor Relations Board.	

GPO 880-824

Form NLRB-652
(7-75)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION

Pursuant to a petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby agree that the petition is hereby amended to conform to this Stipulation and that the approval of this Stipulation constitutes a withdrawal of any Notice of Representation Hearing previously issued in this matter, and further AGREE AS FOLLOWS:

1. SECRET BALLOT.—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. ELIGIBLE VOTERS.—The eligible voters shall be those employees included within the unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, employees in the military services of the United States who appear in person at the polls, employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements, but excluding any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than 12 months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION.—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS.—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. TALLY OF BALLOTS.—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. POSTELECTION AND RUNOFF PROCEDURE.—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. RECORD.—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this Stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. COMMERCE.—The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). *(Insert commerce facts.)*

9. WORDING ON THE BALLOT.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event that more than one labor organization is signatory to this Stipulation, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or, if the occasion demands, from top to bottom. *(If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.)*

First.

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY.—

11. DATE, HOURS, AND PLACE OF ELECTION.—

12. THE APPROPRIATE COLLECTIVE-BARGAINING UNIT.—

(Employer)

By .....
(Name) (Date)

(Title)

Recommended:

(Board Agent) (Date)

Date approved .....

Regional Director,
National Labor Relations Board

(Name of Organization)

By .....
(Name) (Date)

(Title)

(Name of other Organization)

By .....
(Name) (Date)

(Title)

Case No. .....

U.S. GOVERNMENT PRINTING OFFICE : 1976—O 589 939

FORM NLRB-4477
(7-75)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election dates and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 165 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 384 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge, Subregion, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the on or before . No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. This request must be received by the board in Washington by

Dated_____

at_____

_____
Regional Director, Region

UNIT DETERMINATION: AN ANNOTATED BIBLIOGRAPHY

Anderson, Arvid. "Selection and Certification of Representatives in Public Employment." Proceedings of the New York University Twentieth Annual Conference on Labor. New York: Mathew Bender, 1968.

Theme.

The selection and certification of the bargaining representative is not an end in itself, but a means to an end -- the promotion and encouragement of collective bargaining in the public service. The type of bargaining unit established will have a profound impact on whether or not the collective bargaining process will work.

Summary.

1. The question of representation often puts into conflict two of the value systems encouraged by labor relations laws: the right of self-determination versus the right to bargain collectively as the exclusive representative of a majority of the employees. Balancing the value of self-determination and collective bargaining is a real challenge to administrative agencies and employer and employee organizations.

2. Efforts should be made to avoid excessive fragmentation of bargaining units which clearly have little reason for existence except their extent of organization; efforts should be made to avoid establishing bargaining units of competing labor organizations representing the same category of employees.

3. In the determination of a bargaining unit, one must distinguish between the concept of the most appropriate bargaining unit and the concept of an appropriate bargaining unit, and there can be a vast distinction.

4. The scope of bargaining issues also has an impact on the appropriate bargaining unit. If bargaining is conducted over wages, hours, and conditions of employment, a broader collective bargaining unit may be appropriate than if the bargaining is limited to the terms and conditions of employment, which are peculiar to the employment situation of a particular craft, profession, or geographical location.

5. In New York City, bargaining units have been established on the basis of job titles. While this system has worked well for the purpose of encouraging the organization of employees, it has also led to a great number of bargaining units represented by different unions, in some instance representing the same category of employees.

The items in this section are selected from Ralph T. Jones, Public Sector Labor Relations: An Evaluation of Policy Oriented Research (Belmont, Massachusetts: Contract Research Corporation, February, 1975). With support of Research Applied to National Needs, Division of Social Systems and Human Resources, National Science Foundation, Washington, D.C. 20550.

6. A significant question often raised with respect to supervisors in public employment is whether they have a community of interest with the employees whom they supervise that outweighs any conflict of interest that they might have in the direction of the work force.

7. Dr. Wesley Wildman of the University of Chicago has concluded that if teacher organizations include administrators within their membership, and if such supervisors participate in the collective bargaining activities, then the system of lay control of education may change, and to the extent that educators are separated from the management side of the bargaining table and seek to represent their own interests, school boards are divested of their most effective spokesmen during negotiations.

8. The forms of voluntary recognition and the issues arising thereunder have many similarities between public and private employment. Dues-deduction cards, payroll signatures, and other union authorization cards may be used for such purposes.

9. Refusing to recognize the striking union hardly seems to be an effective way of dealing with the strike problem. On the contrary, the existence of such requirement may itself provoke strikes for recognition and thus be self-defeating. Imaginative administration and court interpretation may solve this dilemna.

10. The goal of encouraging collective bargaining in public employment is based on the idea that the balancing of employer-employee rights in governmental employment is not solely for the purpose of strengthening governmental unions, but is a means of improving the level and quality of public service and of strengthening our political democracy.

Begin, James P. and Weinberg, William M. "Dispute Resolution in Higher Education." Working Paper, prepared for delivery at the annual meeting of the Society of Professionals in Dispute Resolution, Chicago, November 12, 1974.

Theme.

The authors discuss some of the peculiarities of developing systems of dispute resolution in higher education.

Summary.

1. Impasse procedures in public institutions differ from those in private institutions. Private institutions have recourse to the state and federal mediation agencies. The usual pattern in the public sector is to use some combination of mediation and fact-finding.

2. The structure of bargaining in public higher education is complex. It also varies considerably, reflecting the different organizational structures of educational systems.

3. One pattern is the system-wide bargaining unit. Two examples are the State University of New York and the City University of New York. In both cases bargaining is controlled by a centralized agency.

4. A second model involves separation of university negotiations from centralized state college negotiations. Two notable examples of the pattern are found in New Jersey and Massachusetts. In New Jersey, state college bargaining is controlled by the Governor's office; the state university by contrast functions in a relatively autonomous fashion.

5. A third pattern arose in Michigan which differs from most other states. The universities all have a high degree of autonomy, and there is no centralized bargaining structure.

6. In Rhode Island each institution is organized as a separate unit. Negotiations are directed by the State Board of Education, however.

7. The diffusion of authority in higher education structures promotes multi-level, multi-lateral bargaining. Negotiations are often frustrated because the management team must conform to guidelines imposed by the state authority. In many situations, administrators may also be unable to determine the extent of their own authority. The laws of decision-making authority may vary from issue to issue.

8. Decision-making on the union side is also complicated by broadly defined units which often include both teaching and non-teaching per-

sonnel. Another problem is that academics may be unwilling to relinquish authority to the union leadership. Bargaining is time consuming: negotiating sessions resemble faculty meetings, which means that they are characterized by "interminable discussion, debate and digressions." The development of informal administration-union relationships is hampered by an absence of experienced leaders elected on a year-to-year basis.

9. The professional characteristics of faculties may be undermining their bargaining power. It appears that professors may be disinclined to strike. Moreover, the effectiveness of a strike by university professors is doubtful because of the nature of their function.

10. A unique characteristic of bargaining in higher education is the accommmodation which must be reached between collective bargaining and traditional mechanisms of faculty governance. It appears that bargaining is not usurping most of the traditional functions of the faculty senate: most agreements negotiated to date have not intruded into educational policy issues.

11. Traditional senate participation in faculty personnel decisions has created problems in the design and operation of grievance procedures at many institutions. The operation of peer evaluation produces grievances against colleagues rather than against the administration. This has led to the development of grievance procedures designed to preserve the integrity of academic judgment.

12. A large percentage of contracts negotiated in higher education contain provisions for binding arbitration of grievances. The scope of the procedures, however, is restricted to procedural matters, thereby preserving traditional academic decision-making authority over such substantive issues as reappointments, promotion and tenure.

13. In the City University of New York contract, the arbitrator can reward a grievance for proper compliance only when he finds a procedural violation. The problem is that in some instances, such a decision may require reappointment for another year while an evaluation is being conducted; such an additional appointment may sometimes lead to automatic tenure. When such a case arose, an appeals court decided that the arbitrator had exceeded his authority in that he had effectively granated tenure.

14. Faculty grievance procedures also raise other problems. For instance, where is the dividing line between proper academic judgment and procedural violation?

15. The operation of grievance procedures so far reveals two things:
    a) it has been rare that grievances have advanced to the final step of the grievance procedure; and
    b) most grievances have dealt with unfavorable faculty personnel decisions on such matters as reappointment, tenure and promotion.

Crowley, Joseph R. "The Resolution of Representation Status Disputes Under the Taylor Law." Fordham Law Review, Vol. 37 (1969), pp. 517-534.

Theme.

The article addresses itself to three subjects: 1) the ascertainment of the appropriate unit for representation, 2) the selection of an employee organization, and 3) the question of whether an organization must agree in advance not to strike in order to be granted certification.

Summary.

1. Unit determinations by the New York Public Employment Relations Board (PERB) depart substantially from the private sector policy that a unit need not be the most appropriate unit, but merely an appropriate unit in order to receive certification.

2. PERB has construed the statutory requirement that a unit must "be compatible with the joint responsibilities of the public employer and public employees to serve the public" to require the designation of as few units as possible.

3. This "most appropriate unit" policy has given rise to unit determinations that at times do not coincide with any of the units sought by the parties to the proceeding.

4. The Taylor Law defines an "employee organization" as any "organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees..." This provision has caused questions to be raised whether organizations whose memberships include both public and private sector employees may be certified as exclusive representatives.

5. Generally, organizations with private sector and public sector memberships have been construed to be legal "employee organizations" so long as the public employee members select their own bargaining committee and ratify their own negotiation agreements without participation by private sector members.

6. The Taylor Law requires an organization to renounce the right to strike before certification. The power of PERB to deny certification on the ground of participating in a strike or even to inquire into the good faith of the organization for that reason has been challenged.

7. The procedure for dealing with this matter has been to delay certification of an organization until it demonstrates that its affirmation not to strike was made in good faith.

Doherty, Robert E. "Determination of Bargaining Units and Election Procedures in Public School Teacher Representation Elections." Industrial and Labor Relations Review, Vol. 19 (July, 1966), pp. 573-595.

Theme.

A few states have enacted legislation to permit collective bargaining between teachers and school boards. Such legislation does not contain clear provisions concerning unit determination or elective procedures. A consequence of this lack of legislative guidance is that these matters usually have been resolved by unilateral action of school boards, with or without consultation from competing organizations. Even in most cases where third parties have been called in to render opinions, certain preconditions have been established by the school boards. (Four documents pertaining to representation elections in New Rochelle, New York; Rochester, New York; Newark, New Jersey; and Philadelphia, Pennsylvania are presented to support the last proposition.)

Summary.

1. In the election held in Cleveland in June, 1964, decisions pertaining to unit determination and the conduct of the election were made by a committee consisting of the school superintendent and the heads of the competing organizations.

2. The ground rules for the 1964 Detroit election were decided by the board of education after it had consulted its own personnel committee and the two organizations competing for recognition.

3. Third parties were brought in to make decisions concerning elections in five cities. Only in Newark and New Rochelle did the moderator make all of the decisions about how elections were to be run. In Rochester, for instance, the unit was unilaterally determined by the school board; this left only voting procedures to be handled by the neutral.

4. An important issue which third parties have been asked to resolve is whether department chairmen should be included in the unit. AFT affiliates have usually asked that they be excluded while NEA affiliates have generally asked that they be included.

Draznin, Julius N. "The NLRB and Bargaining Unit Determinations." Unit Determination Recognition and Representative Elections in Public Agencies. Los Angeles: University of California, Institute of Industrial Relations, 1972.

Theme.

The purpose of the NLRB was to insert the government, its supervision and its advice into the economic affairs of the nation, including, through Section 7(a), the outline of a system of checks and balances between industry and labor.

Summary.

1. Majority rule for selecting union representatives was the method utilized in the national labor law. Majority rule has had an impact on the individual employee who was not a union member. That is, while he could pursue his grievances himself, if the grievance is related to the union contract, the union has to be advised.

2. The question of single-location units versus multi-locations as a single unit is complex. The NLRB found that retail establishments, in one instance, part of 22 locations in the New York-New Jersey area, did not lend themselves to a finding of a single-store bargaining unit.

3. Arbitrators are being called upon with greater frequency in public sector labor relations to determine appropriate bargaining units. The issue of unit in the public sector arose out of changes in employment, poorly-defined procedures for the initial determination of the unit, or a very strong, adamant union and/or management attitude in resolving issues of employee assignment and job classification.

4. Unit problems can and do occur at many points in the course of the working relationship between labor and management; but a clearly defined bargaining unit or agreement at the outset of a bargaining relationship can result in reducing problems and costs in the future.

Friedman, Milton. "Unit Determination by Mini-PERBs." Proceedings of the New York University Twenty-First Annual Conference on Labor. New York: Matthew Bender, 1969.

Theme.

There is a great potential for diversity of approach to unit determination throughout the state of New York which may lead to solidified and structured differences from one jurisdiction to another, or which may lead in the course of time to the development of generally accepted procedures on a state-wide basis.

Summary.

1. New York City's unit determination policy leads to considerable fragmentation: any city-wide classification of employees may constitute an appropriate unit and may bargain on wages and hours. However, city-wide matters which must be uniform for all employees may be negotiated only by an organization or group of organizations representing more than 50 percent of the employees subject to the Career and Salary Plan.

2. The drafters of the Taylor Law sought to circumvent the negative aspects of fragmentation through the inclusion of the catch-all "public interest" as one of the criteria for unit determination.

3. Public employers will generally favor the single-unit concept because it prevents whipsawing and because it corresponds with the negotiating history of many jurisdictions. The single-unit, or minimum number of units, may serve the needs of the public employer and the public interest.

4. The dangers of fragmentation include administrative inconvenience and the "get more" syndrome which encourages unions to try to outdo the achievements of one another; the New York City situation is a classic example of the results of fragmentation.

5. The union's ability to organize should not be used as criterion for unit determination. In the private sector where the strike is legal, the union's economic power is an important determinant of what it is able to achieve. In the public sector, on the other hand, this economic power is irrelevant because impasses in negotiations result in fact finding rather than in strike threats.

Gerhart, Paul F. "Scope of Bargaining in Local Government Labor Negotiations." Labor Law Journal, Vol. 20 (August, 1969), pp. 545-553.

Theme.

Some problems in analyzing scope of public sector bargaining are clarified and the impact of some of these problems on the scope of bargaining is discussed.

Summary.

1. Scope of bargaining is the range of issues included in negotiations between the parties in a labor agreement. "Formal scope" is issues covered by agreement, while "real scope" is issues upon which there is joint decision-making.

2. Unit size helps to determine the formal scope of bargaining: small units tend to indicate informal channels of communication, while larger units may mean that formal scope of bargaining does not increase.

3. Strong unions should expand the scope of bargaining.

4. In "reform-type" cities, business is conducted more formally and formal scope of bargaining is likely to increase.

5. In "machine-type" cities, successful unions will probably be part of the machine and, therefore, formal scope of bargaining is limited.

6. Unions will rely on "informal" politics or higher level legislation when formal negotiations at lower levels do not work to their satisfaction. This tendency will prevent scope of bargaining at the local level from reaching the breadth or depth of that in the private sector.

Gilroy, Thomas P. and Russo, Anthony. "Bargaining Unit Issues: Problems, Criteria, Tactics." Public Employee Relations Library, No. 43. Chicago: International Personnel Management Association, 1974.

Theme.

An analytical look at current practices in the determination of appropriate bargaining units is undertaken. The study includes a review of the legal framework in the private sector, the federal service, and in state and local government; the question of unit proliferation and the arguments for and against "broad" units are examined. The unit determination criteria used in a variety of jurisdictions are presented and discussed.

Summary.

1. The Labor-Management Relations Act does not require the establishment of the most appropriate unit, but only that the unit be an appropriate one for the purposes of collective bargaining.

2. The question of the relevant appropriate unit is closely tied to the issue of potential proliferation of bargaining units in the public sector with its attendant problems. Excessive fragmentation of bargaining units is a major evil to be avoided.

3. It is argued that narrow units are often sought in the private sector by unions because this gives them a better chance of winning a representation election and also helps offset any management campaign against unionizing. For political reasons, employers in the public sector keep "hands off" during such campaigns and it is argued that unions need not fear broader units as a disadvantage in winning an election for representation.

4. A community of interest among a group of employees is the criterion most often included in legislation establishing unit determination policy. Some of the elements most often included in identifying a community of interest are: similar job duties, skills, training, working conditions; supervisory structure; organization structure of the employer, and so on.

5. Public sector policy regarding managerial, supervisory and confidential employees varies by jurisdiction. A recent study indicated that 12 state and local laws excluded confidential employees, 10 excluded managerial employees and 8 excluded supervisors. In addition, many confidential management and/or supervisory employees are excluded by administrative agency decisions, though they are not excluded by statute.

6. Most public employers have argued that supervisors should be excluded from bargaining rights on the grounds that they represent management and that management cannot negotiate with management. The Wisconsin State law excludes supervisory personnel from coverage of the statute but the administrative agency may consider petitions for a statewide unit of supervisory personnel to be represented by an organization that does not represent non-supervisors. New York State, on the other hand, allows supervisors in separate units to bargain collectively as a right given in the statute.

7. From the employer's point of view, it is best that the most appropriate unit or units be announced as soon as the determination is made, prior to any showing of interest, card count, representation election, certification or collective bargaining.

8. Unit determination should be the sole province of experts and professionals in the field of public sector labor relations, and political considerations should be excluded from unit determinations.

James, John. "Los Angeles County in Retrospect." Unit Determination Recognition Elections in Public Agencies. Los Angeles: University of California, Institute of Labor Relations, 1972.

Theme.

Principles of unit determination and criteria which are of importance to management in the experience of Los Angeles County are discussed.

Summary.

1. Employees tend generally to seek smaller units than do employee organizations. Workers want an opportunity for personal involvement and personal identification and would like to have very small units where each could have a role to play. Employee organizations attempt to develop units which protect their organizing efforts and can lead to a strong bargaining position.

2. Management generally seeks the smallest number of relatively large units which at the same time will allow the employees to have reasonable freedom in exercising their rights to organize and be represented.

3. Unit determination is an important facet from management's standpoint and should not be determined entirely by the union and employees. There should ultimately be a workable number of reasonable units.

Klein, Paul E. "Unit Determination in New York State Under the Public Employees' Fair Employment Act." Proceedings of the New York University Twenty-First Annual Conference on Labor. New York: Mathew Bender, 1969.

Theme.

Standards for unit determination under the Taylor Law and the meaning these standards have for day to day operation are discussed. Several specific decisions regarding application of these standards to actual unit determination issues are also discussed.

Summary.

1. Under the Taylor Law some of the factors to be taken into consideration in a determination of whether a community of interest actually exists are: the manner in which wages are determined; methods of job and salary classification; interdependence of jobs and inter-change of workers; desire of workers; and occupational differences.

2. In actual practice consideration of the "public interest" resolves itself into a consideration of the "administrative convenience" of the agency which in theory is supposed to be representative of the public interest.

NEA Research Division. "Teachers and Administrators: Same or Separate Negotiations Units?" NEA Research Bulletin, Vol. 49 (October, 1971), pp. 77-79.

Theme.

The trend of teachers' opinions on the subject of whether teacher and administrative personnel should be represented by the same or separate bargaining units is assessed.

Summary.

1. In 1968 teachers were almost equally divided as to whether or not to separate teaching and administrative personnel in bargaining unit composition. (42.6 percent same unit and 41.4 percent separate unit.)

2. In 1971 there had been a small but significant shift in opinion to the effect that more teachers now favored separate units for teaching and administrative personnel (45.8 percent separate unit and 38.2 percent same unit). This shift in opinion occurred mainly among female teachers since in both years male teachers expressed a preference for separate units.

3. Secondary teachers preferred separate units in both years. Elementary teachers reversed their preferences over the years to the effect that they preferred separate units in 1971 by about the same margin that they preferred the same unit in 1968.

4. Teachers in large (25,000 or more) and medium-size (3,000-24,999) school systems favored separate units while those in small systems were more or less evenly divided in 1971. By contrast, in 1968 teachers in large and medium-size systems were evenly divided while those in small systems favored the same unit.

5. In 1968 teachers in the Southeast and West strongly favored the same unit for all personnel, while the reverse was true in the Northeast. Teachers in the Mid-West were evenly divided. In 1971, teachers in all regions except the Southeast strongly favored separate units and even in the Southeast, the opinion was evenly divided.

6. Urban teachers were more or less evenly divided in both years. Suburban teachers moved from being evenly divided in 1968 to the point where half favored separate units and one-third favored all-inclusive units in 1971. Rural teachers expressed a preference for all-inclusive units in 1968 and were evenly divided in 1971.

Research Bulletin.

Methodology.

Survey. A survey was administered to a "representative sample of the country's teachers" in the spring of 1968 and again in the spring of 1971.

Newman, Wynn. "Major Problems in Public Sector Bargaining Units." Proceedings of the New York University Twenty-Third Annual Conference on Labor. New York: Matthew Bender, 1971.

Theme.

The confused situation of bargaining unit determination affects the ability of a union to organize and the opportunity of the employees to select a representative of their choice.

Summary.

1. There is a lack of consistency of bargaining units; there exists a variety of units on a statewide, city-wide, county-wide, single-location or multi-location basis covering all or part of an agency, departmental units, units of classified and nonclassified employees as well as special occupational or craft units, supervisory units, and so forth. In addition, bargaining at a single location may be fragmented with different unions representing various combinations of employees for non-wage and wage negotiations.

2. Statewide units destroy democratic traditions by making it difficult to call local meetings, to engage in contract negotiations, and to hold contract ratification meetings.

3. No laws governing public sector employees give them the same rights as those in the private sector. So much anti-strike legislation was introduced in 1968 and 1969, that the unions spent a considerable amount of their time trying to defeat such proposals, though the proposals would have also provided a mechanism for conducting representation elections.

Ogawa, Dennis T. and Najita, Joyce M. Guide to Statutory Provisions in Public Sector Collective Bargaining: Unit Determination. Honolulu: Industrial Relations Center, College of Business Administration, University of Hawaii, 1973.

Theme.

This survey gives a comprehensive breakdown of the unit determination provisions contained in 66 state laws, municipal ordinances and personnel regulations.

Summary.

1. Provisions pertaining to unit determination ranged from mere indirect references to school district units and police and fire department units in legislation covering only teachers, policemen and firefighters, respectively, to more specific and detailed provisions in comprehensive laws.

2. Most laws delegate the responsibility for unit determination to certain administrative agencies which are customarily provided with unit criteria and, often, with limitations regarding certain classes of employees.

3. Most statutes applying only to teachers do not contain detailed provisions on units and only imply that school districts are appropriate units. Statutes covering only police and/or firemen contain analogous provisions.

4. Unit criteria are set forth in two-thirds of the general statutes covering state and/or local government employees. "Community of interest" is by far the most frequently mentioned criterion.

5. Almost all comprehensive statutes contain provisions excluding certain employees from coverage. Less than half the teacher laws stipulate exclusions.

6. Provisions for separate units of professional employees are common both in comprehensive statutes and in those relating only to a single group of employees.

Pegnetter, Richard. "Multi-Unit Bargaining in the Federal Government." Government Employee Relations Report (1973), pp. 61:801-61:806.

Theme.

Multi-unit bargaining in the federal government may serve as a useful device for both management and labor. The available experience demonstrates that a multi-unit structure can make bargaining both more stable and more meaningful.

Summary.

1. Multi-unit bargaining is a single contract negotiated between management and employees in more than one established bargaining unit.

2. Unions may seek a multi-unit bargaining structure in the private sector for several reasons: common contract terms under a master agreement represents a simple method to take wages out of competition. An even more basic concern is the equalization of power. With a multi-unit arrangement, the unions can often bargain from a stronger, unified stance in the face of employers powerful enough to overcome individual unions. For employers, multi-unit contracts provide a **defense against whipsawing.**

3. The scope of bargaining is well defined and universal in the private sector. In contrast, federal agencies often tend to parcel out the authority to negotiate certain matters at lower levels of management. As a result, special attention must be given to the possibility that a multi-unit contract negotiated at a higher level might result in increasing the scope of bargaining.

4. The following forms of multi-unit bargaining can be identified from Union Recognition in the Federal Government (U.S. Civil Service Commission, Office of Labor-Management Relations):

a) One union local which negotiates a single contract covering several recognized units it represents at a single installation or activity;

b) Several different locals of the same union which negotiate a master contract for several recognized units at the same installation;

c) An intra-union team negotiating a single agreement for recognized units at more than one installation. This may take the form of simply more than one installation or it may include all installations represented by the union in a particular management region;

d) Bargaining by a single union which establishes a contract for all the union's units in an agency. Neither an agency-wide nor a region-wide agreement would preclude agreements with any other union having the right to represent employees in the agency.

Prasow, Paul. "Principles of Unit Determination Concept and Problems." Unit Determination Recognition and Representation Elections in Public Agencies, Los Angeles: University of California, Institute of Industrial Relations, 1972.

Theme.

Often the fundamental issue in cases of unit determination is not what is the most appropriate unit, but rather what is an appropriate unit, of which there could be several.

Summary.

1. There seems to be more justification for broad units in the public sector than in the private sector, primarily because of civil service rules and regulations normally promulgated to apply to large categories of employees, including almost all government workers.

2. Broad uniformity is traditional in public sector employment. In private industry, however, a major factor that has made for narrow units has been the competitive nature of the industry. Management and employees faced with different market constraints must remain relatively free to consider their separate problems.

3. In the public sector, with the treasury uniformly governing all financial aspects of the situation, the problem of competition between different groups in the industry is not a factor. Also, in both the private and public sectors, employee election districts have often been influenced largely by strategic considerations of the employer and union.

4. The most important single criterion for establishing a bargaining unit is the community of interest among employees. If that criterion is disregarded, the consequences can be unfortunate.

5. Unit determination can decisively affect the scope of the bargaining issues. If negotiations include wages, hours, and working conditions, a much broader unit is feasible than if bargaining is limited to working conditions peculiar to a craft or profession.

6. There are usually two types of employee organizations in the public sector: the independent association and the affiliated union. The former often prefers broad installation-wide groupings of employees, rather than the narrower units favored by unions whose limits are considered with the view to winning elections.

Schneider, B.V.H. "Unit Criteria in Local Government--Legal Decisions: Current State of the Art." Unit Determination Recognition and Representation Elections in Public Agencies. Los Angeles: University of California, Los Angeles, 1972.

Theme.

Under the Meyers-Milias-Brown Act, two and one-half years' experimentation with recognition and unit determination have produced a wide variety of results.

Summary.

1. In the 15 counties in California with unit determination procedures, all allow elections under certain circumstances. For example, in the case of a challenging organization most of these counties allow for elections. In the 16 cities with unit determination procedures, all allow for elections under certain circumstances, and in five cities elections are mandatory.

2. Most jurisdictions with recognition procedures of some kind -- 37 counties and 18 cities -- allow for majority representation as opposed to general representation. Of those with established procedures of some kind, about 40 percent of the counties and most of the cities have unit determination procedures.

3. Where unit determination exists, elections are the common method of determining representation rights where there are competing organizations.

Simon, Larry G. "The School Finance Decisions: Collective Bargaining and Future Finance Systems." The Yale Law Journal, Vol. 82 (January, 1973), pp. 409-459.

Theme.

The effect of changing methods in school financing by banning wealth-dependent distinctions among school districts would be (a) to increase the power of teachers' unions and (b) to involve courts in a tangle of non-justiciable issues. Furthermore, there is no strong liklihood of increased quality of education in poorer districts.

Summary.

The immediate consequences of denying school finance systems dependent on the wealth of the community would be to put the whole school financing process in the hands of the state legislature. In the short run this would lead to lobbying efforts by a combined group of school personnel and citizens from the wealthier districts to get around the change in financing methods and reduce its impact. Simon sees potential political accommodation in arguments that education 'costs more' in some areas than in others. Eventually, teachers' unions would have to deal with the state rather than with local communities, probably resulting in a single bargaining agent for all the state's teachers.

By fostering a state-level teachers' union, a state-wide school financing system would tend to equalize the differences between school districts, leading for instance, to a state salary schedule; and it would probably result in the amalgamation of non-financial differences between districts such as class size and teaching loads by allowing them to become issues of contract negotiations.

Three immediate effects in the quality of schools would be a rigidity in governance because of the uniform contractual relations between teachers and school officials; a potential fiscal problem founded in the size and strength of a state-wide union and the inelasticity of demand for its services; and loss of voter control over educational policy even in non-financial areas because of the difficulty of maintaining a multiciplicity of local inputs to the state level negotiations. The power of the teachers' unions to call selective strikes or threaten a state-wide strike would leave local authorities with little control over the schools in their districts.

Reviewing the areas of accommodation which could result from attempts to change the school financing system, Simon concludes that there would be a number of difficult legal issues which the courts would be called on to adjudicate. For instance, what is education? Could a wealthy district build town libraries adjacent to the schools without 'spending more on education?' Would a library in fact be an important part of education? Do differences in costs mean differences in quality when (a) the item

purchased is the same or (b) the item is different? The problem is that in order to make any new system work there must be standards which a court can enforce, and guidelines for these standards are obscure.

Any court-ordered change in the present method of school financing would be very difficult to administer.

GLOSSARY FOR UNIT DETERMINATION

Section numbers following definitions refer to the Rodda Act.

AFL-CIO	Name of the federation created by the merger in 1955 of the American Federation of Labor and the Congress of Industrial Organizations.
American Arbitration Association (AAA)	Private nonprofit organization established to aid professional arbitrators in their work through legal and technical services, and to promote arbitration and factfinding with and without recommendations as a means of settling commercial and labor disputes. Provides lists of arbitrators for a fee upon request.
Arbitrator (Impartial Chairman)	An impartial third party to whom disputing parties submit their differences for decision (award). An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period. Under the Rodda Act, both the arbitration procedures and the arbitrator are chosen by the parties themselves.
Arbitration, Interest	The determination by an arbitrator of new agreement provisions; the arbitration of the terms of the new collective bargaining agreement as distinguished from arbitration involving the interpretation and the application of the current agreement (or grievance arbitration). Sometimes referred to as disputes involving <u>interests</u> in new terms and conditions of an agreement rather than <u>rights</u> under the terms of the existing agreement. The Rodda Act allows for interest arbitration but does not mandate procedure.
Arbitration, Advisory	An attempt in the public sector to employ the arbitration process to resolve disputes while still recognizing the sovereignty of the government. The arbitrator's award need not be accepted as where the employer decides the award is contrary to overriding public interest. The Rodda Act uses mediation and factfinding rather than advisory arbitration.

Arbitration, Voluntary	Third party settlement where labor and management jointly request that an issue be submitted to arbitration. This may be done on an ad hoc basis or may be pursuant to a collective bargaining agreement making arbitration the terminal point of the negotiated grievance procedure. Sec. 3548.5 and 3548.6 of the Rodda Act allows for voluntary arbitration.
Association	An independent organization of employees generally not under the direct jurisdiction of a national union. Major examples include the California State Employees Association and the National Education Association.
Authorization Card	Statement signed by employee designating a union as authorized to act as his agent in collective bargaining. An employee's signature on an authorization card does not necessarily mean that he is a member of or has applied for membership in the union.
Bargaining Agent (Bargaining Representative)	Union designated by an appropriate government agency, such as the Education Employment Relations Board, or recognized voluntarily by the employer as the exclusive representative of all employees in the bargaining unit for purposes of collective bargaining.
Bargaining Unit	Shortened form of "Unit Appropriate for Collective Bargaining." Group of employees in a craft, department, plant, form, occupation or industry recognized by the employer or group of employers, or designated by an authorization agency such as the Educational Employment Relations Board as appropriate for representation by a union for purposes of collective bargaining. Under the Rodda Act, the bargaining unit must have a community of interest between and among the employees (Sec.3545).
Boycott	Effort by an employee organization, usually in collaboration with other organizations, to discourage the purchase, handling, or use of products of an employer with whom the organization is in dispute. When such action is extended to another employer doing business with employer involved in the dispute, it is termed a secondary boycott.
Business Agent (Union Representative)	Generally a full-time paid employee or offical of a local union whose duties include day-to-day dealing with employers and workers, adjustment of grievances, enforcement of agreements, and similar activities.

Captive Audience	Employees required to attend a meeting at which the employer makes a speech, usually shortly before a representation election. The National Labor Relations Board requires an employer to give the union an opportunity to answer such a speech if the employer has prohibited solicitation on company property during nonworking hours.
Card-check	Comparison of union authorization cards signed by employees against employers payroll to determine the extent of union support by employees.
Certified Organization or Certified Employee Organization	An organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Sec. 3544).
Certification	Formal designation by a government agency, of the employee organization selected by the majority of employees to act as exclusive bargaining agent for all employees in the unit. Under the Rodda Act, the organization is certified by filing a request with a public school employer alleging that a majority of employees in an appropriate unit wished to be represented by such organization and by meeting any challenges as described in Article 5.
Challenged Ballot	A vote questioned by one of the parties to a representation election. Common practice is to resolve the challenges and open and count the challenged ballots only if the number of challenged ballots is sufficient to affect the outcome of the election.
Check-off	Arrangement whereby an employer deducts from the pay of union members in a bargaining unit membership dues and assessments and turns these monies over to the union. In some jurisdictions the public employee union is required to pay a fee for this service.
Closed Shop	A provision in a collective bargaining agreement under which the employer may hire only union members and retain only union members in good standing. The closed shop is illegal under federal law for industries and business engaged in interstate commerce (See Union Shop).

Collective Bargaining (Collective Negotiations)	A method of bilateral decision making in which representatives of the employees and employer determine the conditions of employment of all workers in a bargaining unit through direct negotiation. The bargaining normally results in a written contract which is mutually binding and sets forth wages, grievance procedures, and other conditions of employment to be observed for a stipulated period. Collective bargaining is to be distinguished from individual bargaining, which applies to negotiations between an individual employee and the employer.
Collective Bargaining Agreement	Written contract between an employer (or employers) and an employee organization, usually for a definite term, defining the conditions of employment (wages, hours, vacations, holidays, overtime payments, etc.), the rights of the employees and the employee organization, and the procedures to be followed in settling disputes or handling issues that arise during the life of the contract.
Collective Bargaining in Good Faith (Taft-Hartley Act)	To meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
Community of Interest	A factor to be considered in determining whether employees should be grouped together as an appropriate bargaining unit. Community of interest is not defined by the act, but some guidelines as stated in the Rodda Act are established practices including, among other things, the extent to which employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district. (sec. 3545 a)
Company Union	Historically, a term used to describe a labor organization which is organized, financed, or dominated by the employer, usually with the purpose of preventing the formation of a legitimate organization controlled by and representing the employees.

Conciliation	See "mediation."
Confidential Employee	One whose responsibilities or knowledge in connection with the labor-management issues involved in collective bargaining, grievance handling, or the content of union-management discussion would make his membership in the union incompatible with his official duties. Such individuals usually are staff employees reporting to and accountable to those in management responsible for the conduct of union-management discussions, especially those relating to wages, hours, and/or working conditions of union-represented employees. Under the Rodda Act "confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to his employer's employer-employee relations(sec.3540.1 c)
Consent Election	A procedure for holding elections to determine by majority vote of employees in a bargaining unit which, if any, employee organization will serve as their bargaining representative. This procedure is undertaken by mutual agreement of the parties.
Consultation	An obligation on the part of employers to consult the employee organization on particular issues before taking action on them. In general the process of consultation lies between notification to the employee organization, which may amount simply to providing information, and negotiation, which implies agreement on the part of the organization before the action can be taken.
Contract-bar Rules	Policies followed in determining when an existing agreement between an employer and a union will bar a representation election sought by a union attempting to unseat an incumbent employee representative.
COPE	Council of Political Education (AFL-CIO)
Craft Employee	Any employee who is engaged with his helper or apprentices in a manual pursuit requiring the exercise of craft skills which are normally acquired through a long and substantial period of training or a formal apprenticeship and which in their exercise call for a high degree of judgment and manual dexterity, one or both, and for ability to work with a minimum of supervison. The term shall also include an apprentice or helper who works under the direction of a journeyman craftsman and is in a direct line of succession in that craft.

Craft Union	A labor organization which limits membership to workers having a particular craft or skill or working at closely related trades. In practice, many so-called craft unions also enroll members outside the craft field, and some come to resemble industrial unions in all major respects. The traditional distinction between craft and industrial unions has been substantially blurred.
Craft Unit	A bargaining unit composed solely of workers having a recognized skill, for example, electricians, machinists, or plumbers.
Decertification	Withdrawal by a government agency of an organization's official recognition as exclusive negotiating representative. (Article 5)
Educational Employment Relations Board	Three member board appointed by the Governor, to administer the Rodda Act. (Sect. 3541)
Employee or Public School Employee	Any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees. (Sect. 3540.j)
Employee Organization	Any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.(Sect. 3540.1 d)
Employer	The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization (IMRA). In the context of public education it means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.(3540.1 k)

Exclusive Representative	The employee organization recognized or certified as the exclusive negotiating representative of certified or classified employees in an appropriate unit of public school employer. (Sect. 3540.1 e)
Exclusive Bargaining Rights	The right and obligation of an employee organization designated as majority representative to negotiate collectively for all employees, including nonmembers, in the negotiating unit.
Exclusive Recognition	When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. See "exclusive representative."
Hearing	A meeting during which an officer of Educational Employee Relations Board hears argument and takes testimony for the purpose of developing factual record relevant to the issue(s) in representation. The term does not apply to proceedings involving mediation, factfinding and arbitration under the commission's rules and regulations and statement of procedure.
Hearing Officer	An officer of Educational Employee Relations Board appointed to conduct a hearing under the commission's rules and regulations.
Fact-finding	A process whereby an independent third party or panel is asked to conduct hearings, either public or private, make investigations and issue a report. If the report makes a determination of data and economic information, the process is called fact-finding without recommendations. If the panel suggests settlement terms for the parties, the process is called advisory arbitration, board of review or fact-finding with recommendations. If the report is binding on both parties the process is called arbitration. Under the Rodda Act, fact-finding follows mediation attempts. (Article 9)
Federal Mediation and Conciliation Service (FMCS)	An independent federal agency which provides mediators to assist the parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of "preventative mediation." Mediation services are also provided by several state agencies.

Impasse	When the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in position are so substantial or prolonged that future meetings would be futile. (Sect. 3540.1 f)
Industrial Union	A union admitting to membership all persons in a "plant" or industry; unskilled, semi-skilled an skilled, regardless of work performed. Industrial unions sometimes are referred to as vertical unions.
Injunction	A court order restraining individuals or groups from committing acts which the court determines may do irreparable harm. There are two types of injunctions: temporary restraining orders, issued for a limited time and prior to a complete hearing; permanent injunctions, issued after a full hearing, in force until such time as the conditions which gave rise to their issuance has been changed.
Internal Disputes Plan	AFL-CIO's in-family procedure for resolving disputes between and among affiliated unions. The plan, set forth in Article XX (formerly XXI) of federation's constitution, provides for submission of disputes to impartial umpires with right of appeal to AFL-CIO executive council. Its purpose is to protect established relationships--not paper jurisdiction--of affiliates.
International Union	The self-identification used by most unions in the United States which have affiliated locals in other countries, usually Canada.
Jurisdiction, Union	Authority claimed by union to be sole representative of workers engaged in a specific type or class of work.
Jurisdictional Dispute	Conflict between two or more employee organizations over the organization of a particular establishment or whether a certain type of work should be performed by members of one organization or another. A jurisdictional strike is a work stoppage resulting from a jurisdictional dispute.

Labor Management Relations Act 1947 (Taft-Hartley Act)	Federal law amending the National Labor Relations Act (Wagner Act), 1935, which, among other changes, defined and made illegal a number of unfair labor practices pursued by unions. It preserved the guarantee of the right of workers to organize and bargain collectively with their employers, or to refrain from such activities, and retained the definition of unfair labor practices as applied to employers. The act does not apply to employees in a business or industry where a labor dispute would not affect interstate commerce. Other major exclusions are: employees subject to Railway Labor Act, agricultural workers, government employees, nonprofit hospitals, domestic servants and supervisors. Amended by Labor-Management Reporting and Disclosure Act of 1959.
Labor Organization (Taft Hartley)	Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours employment, or conditions of work.
Local	Group of organized workers in a specific geographic area which holds a charter from a national or international union.
Lockout	A temporary suspension of work or denial of employment by an employer during a labor dispute. The distinction between a strike and a lockout depends on which party initiates the work stoppage.
Lodge	Term used in some labor organizations as the equivalent of local. See "local."
Maintenance of Membership	A form of union security whereby employees who are union members on a specified date and those who elect to become union members after that date are required to remain members in good standing as a condition of employment during the term of the union's contract.

Management Employee

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 Educational Employment Relations Board.(Sect. 3540.1g)

Management Prerogatives

Rights reserved to management, which may be expressly noted as such in a collective agreement. Management perogatives usually include the right to schedule work to maintain order and efficiency, to hire, etc.

Mediation

Usually used interchangeably with conciliation to mean an attempt by a third party, usually a government official, to bring together the two sides in an industrial dispute. The mediator has no power to force a settlement but he can offer compromise solutions.

Under the Rodda Act, the parties may ask the Educational Employee Relations Board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on mutually agreeable terms. The mediator shall meet with the parties, either jointly or separately, and take other steps as he may deem appropriate in order to persuade the parties to resolve their differences. The cost of the mediator shall be borne by the Board.

The parties may also agree upon their own mediation procedure. In such a case, the costs shall be borne equally by the parties. Under the Rodda Act mediation is the first step when impasse is met.

Meeting and Negotiating

Meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation. The execution, if requested by either party, of a written document incorporating any agreements reached, which document shall when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7,shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceeding three years. (Sect. 3540.1 h)

Memorandum of Understanding	A written non-binding agreement between the representative of a public agency and a public employee organization setting forth terms and conditions of employment.
National Labor Relations Act, 1935 (Wagner Act)	Basic federal act guaranteeing private sector workers the right to organize and bargain collectively through representatives of their own choosing.
National Labor Relations Board (NLRB)	Five man board created by the National Labor Relations Act whose functions are to define appropriate bargaining units, to hold elections to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the act's provisions prohibiting certain employer and union unfair labor practices, and otherwise to administer the provisions of the act.
Negotiating Unit	See "Bargaining Unit"
Negotiation	To communicate or confer with another so as to reach a settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise.
Organizational Security	Either: (1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him, as a condition of continued employment, if he does join, to maintain his membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his obligation to the employee organization within a period of 30 days following the expiration of a written agreement; or (2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the agreement, or a period of three years from the effective date of such agreement, whichever comes first. (Sect. 3540.1 i)

Past Practice Clause	Existing practices in the town, sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement, except, perhaps, by reference to their continuance.
Picketing	Patrolling near the employer's premises to publicize the existence of a dispute, to discourage others from entering, to persuade the employer to recognize the employee organization, or to persuade employees to join the organization.
Preferential Hiring	A provision in a collective bargaining agreement whereby the employer agrees to give preference in hiring to members of an employee organization or, less frequently, to applicants with previous training and experience in the industry, regardless of organization membership.
Professional Negotiations	Term used originally by National Education Association to describe alternative to collective bargaining, and to prevent split in profession's ranks between teachers and school administrators. The distinction between "professional negotiations" and "collective bargaining" has faded over the years.
Recognition	Formal acknowledgement by an employer that a particular organization has the right to represent employees. Exclusive recognition permitted by the Rodda Act, is accorded an organization supported by a majority of employees in an appropriate bargaining unit and carries with it the sole right to represent all unit employees, members and nonmembers, in dealings with management.
Recognized Organization or Recognized Employee	An employee organization which has been recognized by an employer as the exclusive representatative pursuant to Article 5.(commencing with Section 3544) (Sect. 3540.1 1)
Representation Proceeding	A procedure for the purpose of determining the majority representative of employees, if any, in an appropriate collective negotiating unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations.
Rodda Act	Act governing California public schools' employee relations.

Run-Off Election	Second election conducted when no party wins a majority of the valid votes cast in the first election. The run-off is between the two contenders receiving the most votes in the first election.
Supervisor (Taft Hartley)	Any individual having authority, in the interest of the employer to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority, is not of a merely routine or clerical nature, but requires the use of independent judgment.
Supervisory Employee	Any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (sect. 3540.1 m)
Strike	Any concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.
Showing of Interest	Support that union must demonstrate, usually by signed authorization cards, by employees in proposed bargaining unit before an election will be held. Most common requirement is showing of interest among 30 percent of unit employees.
Unfair Labor Practice	Action by either an employer or union which violates the provisions of either national or state labor relations acts. Usually applied to specific practices forbidden by the National Labor Relations Act, as amended. Article 4 of the Rodda Act describes the specific unfair labor practices prohibited in California public school employee relations.

Union Security	Protection of union status by provisions in a collective bargaining agreement establishing closed shop, union shop, agency shop, or preferential hiring and maintenance of membership.
Union Shop	Provision in a collective bargaining agreement that requires all employees to become members of the union within a specified time after hiring or after the provision is negotiated, and to remain members of the union as a condition of employment. The union shop is permitted by federal law and is prohibited in states with "right-to-work laws."
Unit	Shortened form of "unit appropriate for collective bargaining." An appropriate unit includes all employees sharing a community of interests which can be served through collective bargaining. See "bargaining unit," "community of interests."
Violation of the Act (Unfair Labor Practices)	A practice on the part of either an employee organization or public employer which violates the National Labor Relations Act or any state act defining and outlawing unfair labor practices.
Wildcat Strike	A work stoppage, usually spontaneous, by a group of organized employees without the authorization or approval of the employee organization.
Yellow Dog Contract	Where an individual is hired only if he is not a union member and he must remain a nonmember as a condition of his employment.

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